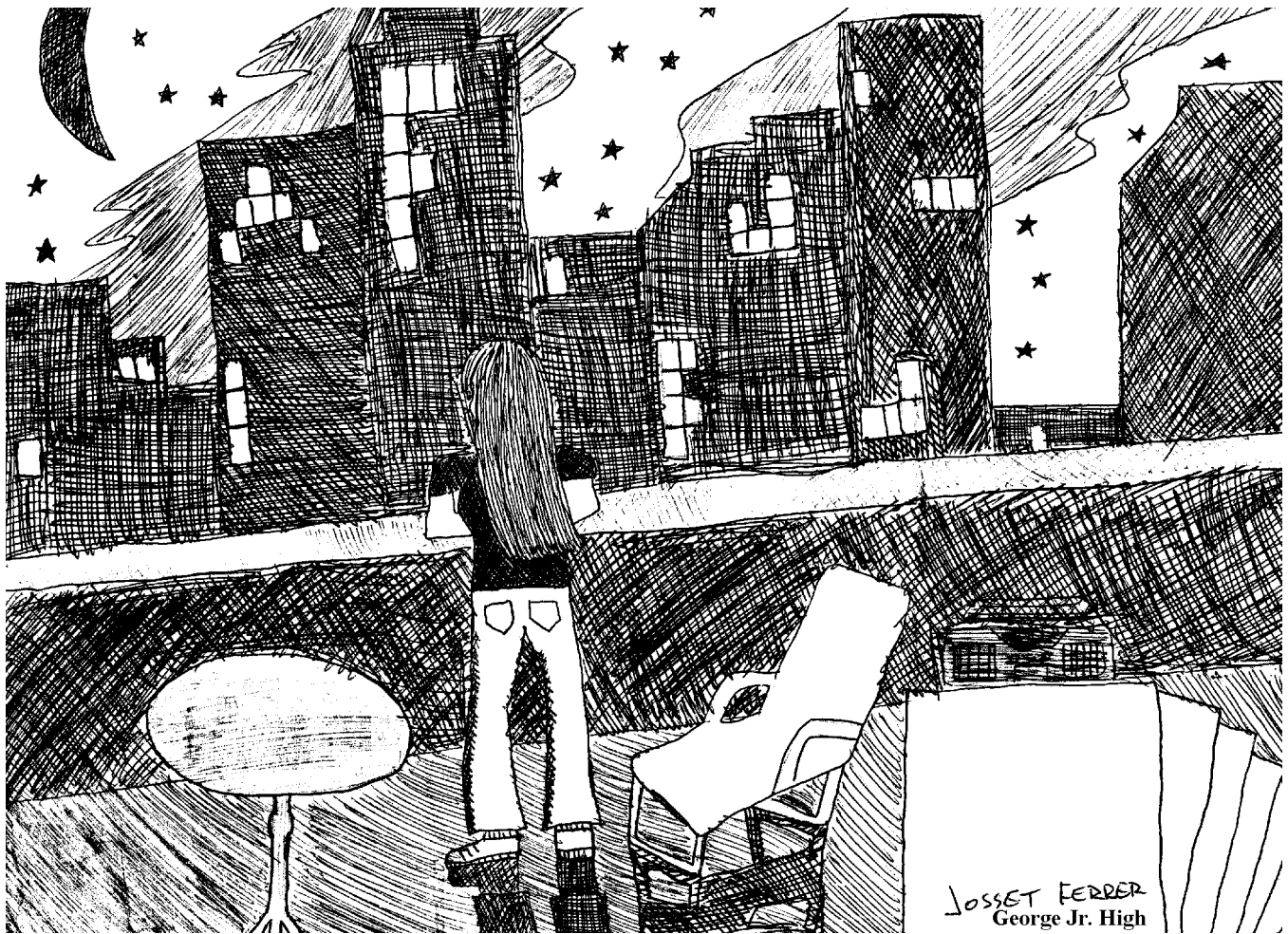

TEXAS REGISTER

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Open Meetings

A notice of a meeting filed with the Secretary of State by a state governmental body or the governing body of a water district or other district or political subdivision that extends into four or more counties is posted at the main office of the Secretary of State in the lobby of the James Earl Rudder Building, 1019 Brazos, Austin, Texas.

Notices are published in the electronic *Texas Register* and available on-line.
<http://www.sos.state.tx.us/texreg>

To request a copy of a meeting notice by telephone, please call 463-5561 if calling in Austin. For out-of-town callers our toll-free number is (800) 226-7199. Or fax your request to (512) 463-5569.

Information about the Texas open meetings law is available from the Office of the Attorney General. The web site is <http://www.oag.state.tx.us>. Or phone the Attorney General's Open Government hotline, (512) 478-OPEN (478-6736).

For on-line links to information about the Texas Legislature, county governments, city governments, and other government information not available here, please refer to this on-line site.
<http://www.state.tx.us/Government>

...

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for December 29, 2004

Designated as the State Administrator for the Interstate Agreement on Detainers, pursuant to Article 51.14 of the Texas Code of Criminal Procedures, for a term at the pleasure of the Governor, Larry D. LeFlore of Huntsville (replacing Salvador Buentello who resigned).

Designated as Deputy Administrator to the State Administrator for the Interstate Agreement on Detainers, Joni White of Huntsville.

Designated as Deputy Administrator to the State Administrator for the Interstate Agreement on Detainers, Carlos E. Valdez of Huntsville.

Appointments for January 3, 2005

Appointed to the Texas Credit Union Commission for a term to expire January 31, 2005, Barbara K. Sheffield of Sugar Land (replacing Virginia Hawkins of Robstown who resigned).

Appointments for January 4, 2005

Appointed to the On-Site Wastewater Treatment Research Council for a term to expire September 1, 2006, Linda Drake of Lindale (replacing Karen Berryman of Pflugerville who resigned).

Appointed to the On-Site Wastewater Treatment Research Council for a term to expire September 1, 2006, Charles Montel Rutledge of College Station (reappointment).

Appointed to the On-Site Wastewater Treatment Research Council for a term to expire September 1, 2006, John R. Blount of Houston (reappointment).

Appointed to the On-Site Wastewater Treatment Research Council for a term to expire September 1, 2006, Timothy N. Taylor of Nacogdoches (reappointment).

Appointed to the On-Site Wastewater Treatment Research Council for a term to expire September 1, 2006, Janet Dee Meyers of Aubrey (reappointment).

Appointments for January 6, 2005

Appointed to the Texas Public Safety Commission for a term to expire December 31, 2007, Ernest Angelo, Jr. of Midland (replacing Robert Holt of Midland whose term expired).

Rick Perry, Governor

TRD-200500103



Appointments for January 10, 2005

Appointed as Presiding Judge of the First Administrative Judicial Region for a term to expire four years from date of qualification, John David Ovard of Dallas (Justice Ovard is being reappointed).

Appointed to the Texas Residential Construction Commission for a term to expire February 1, 2005, Lewis Brown of The Woodlands (replacing Thomas Killebrew of Fort Worth who resigned).

Appointed to the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments for a term to expire December 31, 2005, Audrey M. McDonald of Georgetown (replacing Susan Hargrave who resigned).

Appointed to the Texas County and District Retirement System for a term to expire December 31, 2009, Jerry V. Bigham of Canyon (replacing John Willy of Angleton whose term expired).

Rick Perry, Governor

TRD-200500140



THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are

requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at <http://www.oag.state.tx.us>. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Opinions

Opinion No. GA-0290

The Honorable Eddie Lucio Jr.

Chair, Senate Committee on International Relations and Trade

Sam Houston Building, Room 475

Post Office Box 12068

Austin, Texas 78711

Re: Whether the Texas Commission on Environmental Quality is authorized to raise the environmental cleanup level at a specific site, and if so, what procedures must it follow (RQ-0245-GA)

SUMMARY

As an administrative agency, the Texas Commission on Environmental Quality ("TCEQ") is bound by its own rules. Where a validly adopted rule, here the Texas Risk Reduction Program ("TRRP") rule, establishes the cleanup standard for remediation activity at all sites in the state, TCEQ's application of a different standard to the ASARCO/El Paso Metals Site without changing the rule would be arbitrary and capricious.

TCEQ is authorized under its enabling legislation to amend the TRRP rule so long as it follows the rulemaking procedures of the Texas Administrative Procedure Act.

As a Removal Action under the federal Comprehensive Environmental Response Compensation and Liability Act, or CERCLA, the current United States Environmental Protection Agency ("EPA") cleanup at the Site is required to meet the lead cleanup standard in title 30 Texas Administrative Code section 350.76(c)(1) to the extent it is practicable to do so given the exigencies of the situation. If EPA determines that the action will be a Remedial Action, or final cleanup, then Rule 350.76(c)(1) sets the applicable cleanup standard. In either case, if EPA determines that Rule 350.76(c)(1) is not applicable to the Site as an applicable or relevant and appropriate requirement, or ARAR, that determination would not require a change in the TRRP rule.

Opinion No. GA-0291

The Honorable Ray Allen

Chair, Committee on Corrections

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether, given that Senate Bill 319, Act of May 31, 2003, 78th Leg., R.S., ch. 822, 2003 Tex. Gen. Laws 2607, defines the word "individual" for certain purposes to include "an unborn child," a physician must report a pregnant patient's use of illegal controlled substances as child abuse or as the delivery of controlled substances to a child (RQ-0250-GA)

SUMMARY

The Controlled Substances Act, Health and Safety Code chapter 481, does not impose a duty on a physician to report to local prosecutors or to the Department of Family and Protective Services a pregnant patient who is using or has used illegal drugs during pregnancy. In addition, a physician is not required to report a pregnant patient's illegal drug use under section 261.101(b) of the Family Code. The definition of the term "individual" in section 1.07(a)(26) of the Penal Code, recently revised to include "an unborn child," does not affect the definition of the term "child" in Family Code section 261.101(b).

Opinion No. GA-0292

The Honorable Robert Duncan

Chair, Committee on State Affairs

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether section 1305.003(14) of the Texas Occupations Code exempts from state licensing requirements all persons performing electrical work for a private industrial business, even if a person is not an employee of the private industrial business (RQ-0233-GA)

SUMMARY

Occupations Code chapter 1305, the Texas Electrical Safety and Licensing Act, regulates electrical work in Texas. Section 1305.003(14) of the Occupations Code exempts from the Act's licensing requirements "a person" who is "employed by" a "private industrial business." The terms "person" and "private industrial business" are ambiguous and vague. The term "employed by" refers to a person who is an employee, but whether a person is an employee is a fact question that cannot be answered in the opinion process. Consequently, section 1305.003(14)'s terms do not provide sufficient clarity to answer as a matter of law the question of whether a person performing electrical work for a private

industrial business, even if a person is not an employee of the private industrial business, is exempt from the Act's licensing requirements.

Opinion No. GA-0293

The Honorable Geraldine Miller

Chair, State Board of Education

1701 North Congress Avenue

Austin, Texas 78701-1494

Re: Effect of amended article VII, section 5(b) of the Texas Constitution on the State Board of Education's management of the permanent school fund (RQ-0249-GA)

S U M M A R Y

Texas Constitution article VII, section 5 charges the State Board of Education with managing and investing the assets of the Permanent

School Fund (PSF). Section 5(b) requires the Board to pay the expenses of managing PSF investments, including fees to external investment managers, from funds appropriated by the legislature from the PSF. The Board is not required to pay from appropriated PSF funds the indirect management costs attributable to mutual funds or other investment companies in which it invests PSF funds.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200500124

Nancy S. Fuller

Assistant Attorney General

Office of the Attorney General

Filed: January 12, 2005



PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 1. OFFICE OF THE GOVERNOR

CHAPTER 5. BUDGET AND PLANNING OFFICE

SUBCHAPTER B. STATE AND LOCAL REVIEW OF FEDERAL AND STATE ASSISTANCE APPLICATIONS

DIVISION 1. INTRODUCTION AND GENERAL PROVISIONS OF TEXAS REVIEW AND COMMENT SYSTEM

1 TAC §5.195

The Office of the Governor proposes amendments to §5.195, concerning the Texas Review and Comment System. The amendments propose to add and delete programs in Table I and Table II under subsection (c). The programs proposed to be added and deleted are based on responses to memorandum sent to all 24 regional councils of government and all state agencies with Texas Review and Comment System coordinators. Proposed revisions include new federal assistance programs made available for review under EO 12372 since August 2003, including programs for which the Catalog of Federal Domestic Assistance number has been revised. Amendments include those programs determined to be of significant interest or impact to affected regional planning commissions and the State of Texas.

Ms. Denise S. Francis, State Single Point of Contact, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state and local governments as a result of enforcing or administering the section.

Ms. Francis has determined that for each year of the first five years the section is in effect the public benefits anticipated as a result of enforcing or administering the section will be more effective use of public and financial resources and increased information sharing and coordination among affected governmental entities. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Denise S. Francis, State Single Point of Contact, Governor's Office of Budget, Planning and Policy, P.O. Box 12428, Austin, Texas 78711, 512-463-8465, dfrancis@governor.state.tx.us for a period of 30 days following publication.

The amendments are proposed under Government Code, Title 7, §772.004 and §772.005, and the Local Government Code, Chapter 391, (391.008) which authorizes the Governor's Office to provide for review of state and local applications for grant and loan assistance and to establish policies and guidelines for review and comment. Chapter 391 of the Local Government Code requires certain applicants for state or federal assistance to submit their applications for review to the appropriate regional planning commissions and directs the governor to issue guidelines for carrying out such reviews.

No statutes are affected by these amendments.

§5.195. *Program Coverage.*

(a) - (b) (No change.)

(c) Federal programs included for review under TRACS pursuant to these laws, plus selected other activities, including all direct federal and state development not specifically excluded by law, are shown, respectively, in Tables I and II. Copies of these tables may be obtained from Ms. Denise S. Francis, [the] State Single Point of Contact, Governor's Budget, Planning and Policy Office, Post Office Box 12428, Austin, Texas 78711-2428 or dfrancis@governor.state.tx.us. As required by state law (Government Code, §772.005), all state agencies must notify the Governor's office when applying for federal funds.

Figure: 1 TAC §5.195(c)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 5, 2005.

TRD-200500055

Katherine Knight

Assistant General Counsel

Office of the Governor

Earliest possible date of adoption: February 20, 2005

For further information, please call: (512) 463-3471



PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE

The Texas Health and Human Services Commission (HHSC or Commission) proposes to amend Chapter 353. Chapter 353 describes standards for the Medicaid Managed Care program.

HHSC proposes to amend the following rules: §353.1, Rules of Other Agencies; §353.2, Definitions; §353.3, Experience Rebate in the STAR and STAR+PLUS Programs; §353.101,

Purpose; §353.102, Provider and Member Education Programs Generally; §353.104, Member Education Program; §353.105, Provider Education Program; §353.201, Purpose; §353.202, Member Bill of Rights; and §353.203, Member Bill of Responsibilities; §353.403, Enrollment; §353.405, Marketing; §353.407, Selection of Managed Care Organization (MCOs); §353.409, Scope of Services; §353.411, Accessibility of Services; §353.413, Managed Care Benefits and Services for Children Under 21 Years of Age; §353.415, Member Complaint Procedures; §353.417, Quality Improvement; and §353.419, Financial Standards.

HHSC proposes to repeal the following rules: §353.103, Contract Compliance; §353.204, Construction; §353.301, Purpose; §353.302, Pilot Program Study; §353.303, Federal Waiver; §353.304, Expiration; §353.401, General Provisions; and §353.402, Definitions.

Background and Justification

The current Medicaid Managed Care rules were adopted effective February 1997, in conjunction with Medicaid Managed Care implementation. The 78th Legislature, Regular Session, 2003, through House Bill 2292, Section 2.29, mandated that the Texas Health and Human Services Commission (HHSC) provide medical assistance for acute care through the most cost effective model of Medicaid managed care as determined by the Commission. The Commission plans to expand managed care across the state effective July 2005. The proposed revisions to the existing rules are necessary to support the Medicaid program as managed care is expanded in Texas.

Section-by-Section Summary

HHSC proposes to amend Chapter 353, Medicaid Managed Care, as outlined in this section-by-section summary. Chapter 353, Subchapter A, General Provisions, describes general information for the Medicaid Managed Care program. As amended, section §353.1, Rules of Other Agencies, describes the criteria that the Managed Care Organizations must meet in addition to those in Chapter 353. The proposed amendments to §353.1, update the title of the rule and the references contained within the rule. In addition, new language is added to this section that is deleted from other rules within Chapter 353 for the purpose of streamlining the rules. The deleted language is identified in section changes of this summary. In section §353.2, Definitions, the proposed amendments to the rule update and re-order the definitions and terms used throughout Chapter 353. The proposed amendments to §353.3, Experience Rebate in the STAR and STAR+PLUS Programs, add new language to clarify the intent of the rule and update the reimbursement methodology.

Subchapter B, Provider and Member Education Programs, describes the provider and member education requirements for the Managed Care Organizations (MCOs) participating in Medicaid. Section 353.101, Purpose, outlines the authority for establishing the requirements in this subchapter. The proposed amendments update the references listed in the rule.

Section 353.102, Provider and Member Education Programs Generally, describes the requirements for MCOs to offer education programs to providers and members. The proposed amendments to this rule update the references.

Section 353.103, Contract Compliance, establishes that MCOs must provide education programs for providers and members.

The Commission proposes to repeal this rule; new language regarding contract compliance is included in §353.1, Purpose.

HHSC proposes to amend §353.104, Member Education Program, which describes the components for the member education programs required of the Managed Care Organizations participating in Medicaid. The proposed amendments to the rule add language to clarify the rule. In addition, clarifying language is included concerning the MCO's obligation to educate members about their right to request a fair hearing.

The criteria for the provider education program are contained in §353.105, Provider Education Program. This rule describes the components necessary for the provider education program, which is required of the Managed Care Organizations participating in Medicaid. The proposed amendments to the rule update the references and add new language for clarity.

Subchapter C, Member Bill of Rights and Responsibilities sets out the requirements for these documents. Section 353.201, Purpose, describes the Commission's authority to adopt rules for the Member Bill of Rights and Responsibilities. The proposed amendment to the rule updates the statutory reference for HHSC's authority.

HHSC mandates that MCOs provide a written document that describes the member's bill of rights. The bill of rights for clients participating in the Medicaid Managed Care program is attached to §353.202, Member Bill of Rights. The proposed amendment adds the language contained in the Member Bill of Rights to the rule to assist in distribution of consistent information to members by the MCOs.

Section 353.203, Member Bill of Responsibilities, sets out the requirement that each MCO must provide a Bill of Responsibilities to all Members. The proposed amendment adds the mandatory language that must be included in the Bill of Responsibilities to aid in distribution by the MCOs of consistent information to the members.

HHSC proposes to repeal §353.204, Construction. The rule distinguishes the requirements of Subchapter C, Member Bill of Rights and Responsibilities, for contracts in place prior to August 1, 1996, and those contracts that were renewed or extended after August 1, 1996. The Commission proposes to repeal this section because it is no longer necessary.

Subchapter D, Telephone-Based Health Care Systems Pilot Program, describes a Medicaid Managed Care pilot program offering a telephone-based health care system. The pilot program was mandated by S.B. 10, 74th Legislature, Regular Session, (1995). The Commission proposes to repeal Subchapter D because the pilot program expired January 1, 1998.

Subchapter E, Standards for STAR and STAR+PLUS Programs, sets forth the standards for the STAR and STAR+PLUS programs. HHSC proposes to repeal §353.401, General Provision, which identified rules other than those of HHSC with which Medicaid MCOs must comply. The language has been updated and restated in §353.1, Purpose. In addition, HHSC proposes to repeal §353.402, Definitions. The language in this rule is revised, updated, and incorporated into §353.2, Definitions.

The criteria and standards for enrollment in a Medicaid managed care organization are described in section §353.403. HHSC proposes to amend §353.403, Enrollment, by removing language that makes separate reference to the Primary Care Case Management (PCCM) program. PCCM is now included in the term

"managed care organization" and has been added to the definitions section of this Chapter. The proposed amendments to the rule also replace the term "department" with the term "Commission," as contracts are now with HHSC, not the Texas Department of Health. In addition, the proposed amendments set forth criteria under federal law for participating in Medicaid managed care.

Section 353.405 Marketing, sets forth the requirements for MCOs with regard to marketing plans, materials, and practices. The Commission proposes to amend the rule by replacing the term "department" with the term "Commission," as contracts are with HHSC, not the Texas Department of Health.

The requirements for managed care organizations, subcontractors of MCOs, and compliance with policy set forth by the Commission are listed in §353.407, Selection of Managed Care Organizations (MCOs). HHSC proposes to amend this section by revising the title of the rule to more appropriately describe the intent of the rule. In addition, the proposed amendments replace the term "department" with the term "Commission" and update references within the rule.

The services MCOs are to provide are described in §353.409, Scope of Services. The Commission proposes to amend §353.409, by replacing the term "department" with "Commission." The proposed amendment requires Medicaid MCOs to provide the services that are defined in this title under Chapter 354, Medicaid Health Services. The proposed amendment also deletes language that is no longer necessary because of the addition of the definition of value-added services.

Section 353.411, Accessibility of Services, outlines the MCO's obligation to provide services that are accessible to clients. HHSC proposes to amend the rule by replacing the term "department" with the term "Commission." In addition, the proposed amendments adds language requiring MCOs to ensure no member must travel more than thirty miles to access "acute care hospitals."

The HHSC proposes to amend §353.413, Managed Care Benefits and Services for Children Under 21 Years of Age. This rule outlines the MCOs' obligations with regard to services provided to children under twenty-one years of age. The proposed amendment replaces the term "department" with "Commission" and "STAR" with "Medicaid Managed Care".

The procedures the MCOs are mandated to follow with regards to complaints from members are defined in §353.415, Member Complaint Procedures. HHSC proposes to amend §353.415 by replacing the term "department" with the term "Commission" and the word "recipients" with "clients."

Section 353.417, Quality Improvement, identifies the expectations of the state pertaining to quality improvement programs for the MCOs. The Commission proposes to amend this section by updating the title to "Quality Assessment and Performance Improvement." In addition, the amendments include revised language to update the standards, references, and requirements for the MCOs quality improvement program.

The Commission proposes to amend §353.419, Financial Standards. The proposed amendments to the rule replace the words "department" with "Commission" and "STAR" with "Medicaid Managed Care." The proposed amendments update the language about profit sharing arrangements and add a reference to §353.3, which discusses experience rebates.

Fiscal Note

Tom Suehs, Deputy Commissioner for Financial Services, has determined that during the first five-year period the proposed rules are in effect the fiscal impact to the state will be neutral for state fiscal years 2005 through 2009. The proposed rules will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no effect on small businesses or micro businesses to comply with the rules as they will not be required to alter their business practices as a result of the rule. There are no anticipated economic costs to persons who are required to comply with the proposed rules. There is no anticipated negative impact on local employment.

Public Benefit

Billy Millwee, Deputy Director of Health Services Operations in the Medicaid/CHIP Division, has determined that for each year of the first five years the proposed rules are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit of enforcing the proposed rules will be improved access to and quality of health care services.

Regulatory Analysis

HHSC has determined that the proposed rules are not "major environmental rules" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environment exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that the proposed rules do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposed rules may be submitted to Gilbert Estrada, Policy Analyst, at the Texas Health and Human Services Commission, Medicaid/CHIP Division, Policy Development Support, P.O. Box 85200-5200, MC - H600, Austin, Texas 78708-5200, by fax to (512) 491-1953, or by e-mail to gilbert.estrada@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Public Hearing

A public hearing is scheduled for February 4, 2005, from 9:00 am to 11:00 am (central time) at the Health and Human Services Commission, 4900 N. Lamar Blvd., Room 1410, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Carmen Capetillo at 491-1104.

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §§353.1 - 353.3

Statutory Authority

The amendments to the rules are proposed under the Texas Government Code, §531.033, which provides the Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The proposed amendments affect the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§353.1. Purpose [Rules of Other Agencies].

(a) The purpose of this chapter is to define the requirements for the Medicaid Managed Care program.

(b) The rules in this Chapter 353 must be read in conjunction with federal and state statutes, rules relating to Medicaid in Chapter 254 of this title, and the Texas Department of Insurance rules regarding regulation of HMOs at 28 TAC Chapter 11, except where otherwise indicated.

(c) A managed care organization must comply with all terms of its contract with the Health and Human Services Commission. [These rules shall be read in conjunction with rules adopted by other state agencies charged with operation of the state's Medicaid managed care program, including the Texas Department of Health, at 25 TAC §§30.21-30.32 (Standards for the State of Texas Access Reform (STAR)), and the Texas Department of Mental Health and Mental Retardation, at 25 TAC §§409.401-409.406 (Standards for Managed Care Organizations Providing Behavioral Healthcare Services to Medicaid Recipients).]

§353.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the content clearly indicates otherwise.

(1) Action--An action is defined as:

(A) The denial or limited authorization of a requested Medicaid service, including the type or level of service;

(B) the reduction, suspension, or termination of a previously authorized service;

(C) failure to provide services in a timely manner, the failure of an HMO to act within the timeframes set forth by the Commission and state and federal law;

(D) the denial in whole or in part of payment for a service;

(E) or for a resident of a rural area with only one HMO, the denial of a Medicaid Members' request to obtain services outside of the Network.

(2) Acute Care--Preventive care, primary care, and other medical or behavioral health care provided under the direction of a physician for a condition having a relatively short duration.

(3) Acute Care Hospital--A hospital that provides acute care services.

(4) Agreement or Contract--The formal, written, and legally enforceable Contract and amendments thereto between the Commission and HMOs.

(5) Allowable Revenue--All managed care revenue received by the HMO pursuant to the Contract during the Contract Period, including retroactive adjustments made by HHSC. This would

include any revenue earned on Medicaid managed care funds such as investment income, earned interest, or third party administrator earnings from services to delegated networks.

(6) Appeal--a request for review of an Action.

(7) [(4)] Behavioral Health Services--Covered services for the treatment of mental or emotional disorders, or chemical abuse or dependence. [Allowable services for the treatment of mental or emotional disorders and treatment of chemical dependency disorders.]

(8) Capitation Rate--A fixed predetermined fee paid by HHSC to the HMO each month in accordance with the Contract, for each enrolled Member in exchange for the HMO arranging for or providing a defined set of Covered Services to such a Member, regardless of the amount of Covered Services used by the enrolled Member.

(9) [(2)] Client--Any Medicaid eligible recipient. [and, where the context indicates, a Medicaid eligible recipient who meets the qualifications for enrollment in Medicaid managed care. See also "member."]

(10) CMS--The Centers for Medicare & Medicaid Services, the federal agency charged with oversight of all states participating in the Medicaid program.

(11) Commission--The Texas Health and Human Services Commission.

(12) Complainant--A Member or a treating provider or other individual designated to act on behalf of the member, who files a complaint.

(13) [(3)] Complaint--Any dissatisfaction expressed by a Complainant, orally or in writing to the HMO, about any matter related to the HMO other than an Action. Complaints may include, but are not limited to:

(A) the quality of care of services provided,

(B) aspects of interpersonal relationships such as rudeness of a provider or employee or failure to respect; and

(C) the Medicaid member's rights. [Any dissatisfaction, expressed by a complainant orally or in writing to the managed care organization (MCO), with any aspect of the MCO's operation, including but not limited to dissatisfaction with plan administration; the denial, reduction or termination of a service; the way a service is provided; or disenrollment decisions expressed by a complainant. A complaint is not a misunderstanding or misinformation that is resolved informally by supplying the appropriate information for clearing up the misunderstanding to the satisfaction of the member.]

(14) Contract--The formal, written, and legally enforceable agreement, amendments, and document incorporated into the agreement between an HMO and HHSC.

(15) Core Service Area--The service area counties defined by HHSC for the STAR and STAR+PLUS programs in which eligibles, people who are eligible for managed care, will be required to enroll in the HMO.

(16) Covered Services--Health care services the HMO must arrange to provide to Members, including all services required by the Commission, state and federal law, and all Value-added Services negotiated by the Commission and an HMO. Covered Services include Behavioral Health Services.

(17) Cultural Competency--The ability of individuals and systems to provide services effectively to people of various cultures, races, ethnic backgrounds, and religions in a manner that recognizes,

values, affirms, and respects the worth of the individuals and protects and preserves their dignity.

(18) Day--A calendar day, unless specified otherwise.

(19) Default Enrollment--Assignment of a client to a PCP and HMO by the Commission if the client does not select a PCP and HMO during the enrollment period established by the Commission.

(20) Disproportionate Share Hospital (DSH)--A hospital that serves a higher than average number of Medicaid and other low-income patients and receives additional reimbursement from the State.

(21) Disability--A physical or mental impairment that substantially limits one or more of an individual's major life activities, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, socializing and/or working.

(22) Elective Enrollment--Selection of a PCP and HMO by a client during the enrollment period established by the Commission.

(23) Emergency Behavioral Health Condition--Any condition, without regard to the nature or cause of the condition, which in the opinion of a prudent layperson possessing an average knowledge of health and medicine:

(A) requires immediate intervention and/or medical attention without which the Client would present an immediate danger to themselves or others, or

(B) renders the Client incapable of controlling, knowing or understanding the consequences of his or her actions.

(24) Emergency Services--Covered inpatient and outpatient services furnished by a Provider that is qualified to furnish such services that are needed to evaluate or stabilize an Emergency Medical Condition and/or an Emergency Behavioral Health Condition.

(25) Emergency Medical Condition--A medical condition manifesting itself by acute symptoms of recent onset and sufficient severity (including severe pain), such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical care could result in:

(A) placing the patient's health in serious jeopardy;

(B) serious impairment to bodily functions;

(C) serious dysfunction of any bodily organ or part;

(D) serious disfigurement; or

(E) serious jeopardy to the health of a pregnant woman or her unborn child.

(26) Encounter--A Covered Service or group of Covered Services delivered by a Provider to a Member during a visit between the Member and Provider. This also includes Value-added services.

(27) EPSDT--The federally mandated Early and Periodic Screening, Diagnosis and Treatment program defined in Chapter 33 of Title 25 of the Texas Administrative Code. The State of Texas has adopted the name Texas Health Steps (THSteps) for its EPSDT program.

(28) EPSDT-CCP--The Early and Periodic Screening, Diagnosis and Treatment-Comprehensive Care Program, includes medically necessary benefits for children under 21 years of age in addition to benefits to the general Medicaid population.

(29) Experience Rebate--The portion of the HMO's net income before taxes that is returned to the State in accordance with 28 TAC Chapter 11, Subchapter S.

(30) Fair Hearing--The process adopted and implemented by HHSC in Chapter 357 of this title relating to Medical Fair Hearing rules, in compliance with federal regulations and state rules relating to Medicaid Fair Hearings.

(31) Federal Waiver--Any waiver permitted under federal law and approved by CMS that allows states to implement Medicaid managed care.

(32) [(4)] Health Care Services--The acute, behavioral health care and health-related services that an enrolled population might reasonably require in order to be maintained in good health. [Physical medicine, behavioral health care and health-related services.]

(33) [(5)] Health and Human Services Commission (HHSC)--The single state agency charged with administration and oversight of the state Medicaid program. The Commission's authority is established in Chapter 531 of the Government Code [Texas Health and Human Services Commission].

(34) HMO (Health Maintenance Organization) or Contractor--An organization that holds a certificate of authority from the Texas Department of Insurance to operate as an HMO under Chapter 20A of the Texas Insurance Code or a certified Approved Non-Profit Health Corporation (ANHC) formed in compliance with Article 21.52F of the Texas Insurance Code.

(35) Hospital--A licensed public or private institution as defined by Chapter 241, Texas Health and Safety Code.

(36) Managed Care--A health delivery system in which the overall care of a patient is coordinated by or through a single provider or organization.

(37) Marketing--Any communication from the HMO to a Client that can reasonably be interpreted as intended to influence the Client's decision to enroll or to disenroll from a particular HMO.

(38) Marketing Materials--Materials that are produced in any medium by or on behalf of the HMO and can reasonably be interpreted as intending to transfer goods, ideas, concepts or information from producer to consumer or Clients.

[(6)] MCO--Managed Care Organization. An entity which has a current Texas Department of Insurance certificate of authority to operate as a health maintenance organization under Texas Insurance Code, Article 20A, or as an approved nonprofit health corporation under Texas Insurance Code, Article 21.52F.]

(39) Medicaid--The medical assistance program authorized and funded pursuant to Title XIX, Social Security Act (42 U.S.C. §1396 et seq) and administered by HHSC.

(40) [(7)] Medical Home--A PCP or specialty care Provider who has accepted the responsibility for providing accessible, continuous, comprehensive and coordinated care to Members participating in an HHSC HMO. [A primary care provider who has accepted the responsibility for providing accessible, continuous, comprehensive and coordinated care to members participating in the state's Medicaid managed care program.]

(41) Medically Necessary Behavioral Health Services--Those behavioral health services that are documented and:

(A) are reasonable and necessary for the diagnosis or treatment of a mental health or chemical dependency disorder or to improve, maintain or prevent deterioration of functioning resulting from such a disorder;

(B) are in accordance with professionally accepted clinical guidelines and standards of practice in behavioral health care;

(C) are furnished in the most appropriate and least restrictive setting in which services can be safely provided;

(D) are the most appropriate level or supply of service that can safely be provided;

(E) could not have been omitted without adversely affecting the member's mental and/or physical health or the quality of care rendered, and

(F) are not experimental or investigational.

(42) Medically necessary health services--Health services other than behavioral health services that are documented and:

(A) reasonable and necessary to prevent illnesses or medical conditions, or provide early screening, interventions, and/or treatments for conditions that cause suffering or pain, cause physical deformity or limitations in function, threaten to cause or worsen a handicap, cause illness or infirmity of a member, or endanger life;

(B) provided at appropriate facilities and at the appropriate levels of care for the treatment of the member's medical conditions;

(C) consistent with health care practice guidelines and standards that are issued by professionally recognized health care organizations or governmental agencies;

(D) consistent with the diagnoses of the conditions; and

(E) no more intrusive or restrictive than necessary to provide a proper balance of safety, effectiveness, and efficiency.

(43) [(8)] Member--A person who is eligible for the (Medicaid) medical assistance program under Title XIX of the Social Security Act and is enrolled with the STAR or STAR+PLUS program. [Any eligible Medicaid recipient who is enrolled in the state's Medicaid managed care program.]

(44) [(9)] Member education program--A planned program of education:

(A) regarding access to health care through the managed care organization and about specific health topics;

(B) that is approved by the Health and Human Services Commission [Texas Department of Health]; and

(C) is provided to members through a variety of mechanisms that [which] must include, at a minimum, written materials and face-to-face or audiovisual communications.

(45) Member Materials--All written materials produced or authorized by the HMO and distributed to Members or potential members containing information concerning the HMO. Member Materials include, but are not limited to, Member ID cards, Member handbooks, Provider directories, and Marketing Materials.

(46) Participating HMOs--Those HMOs that have a contract with the Commission to provide services to Medicaid managed care members.

(47) PCCM (Primary Care Case Management)--PCCM is a managed care delivery system allowed under federal regulations in which the Commission contracts with providers to form a managed care provider network.

(48) [(40)] Primary Care Provider--A physician or provider who has agreed with the HMO to provide a Medical Home to Members and who is responsible for providing initial and primary care to patients, maintaining the continuity of patient care, and initiating

referral for care. [An individual who has agreed with the state or an MCO to provide a medical home for members.]

(49) [(44)] Provider--Credentialed and licensed individuals, facilities, agencies, institutions, organizations or other entities, and its employees and subcontractors, that have a contract with the HMO for the delivery of Covered Services to the HMO's Members. [An individual or entity and its employees and contractors that provide health care services to members under the state's Medicaid managed care program.]

(50) [(42)] Provider education program--Program of education about the Medicaid managed care program and about specific health care issues presented by the managed care organization to its providers through written materials and training events.

(51) Provider Network or Network--All Providers that have contracted with the HMO for the applicable program.

(52) QAPI--Quality Assessment Performance Improvements.

(53) Quality Improvement--A system to continuously examine, monitor and revise processes and systems that support and improve administrative and clinical functions.

(54) Risk--The potential for loss if the HMO's expenses and costs exceed payments made by HHSC under the Contract.

(55) Service Area--The counties included in any HHSC-defined Core Service Area as applicable to each HMO.

(56) Significant Traditional Provider (STP)--Providers identified by HHSC as having provided a significant level of care to the target population. Disproportionate Share Hospitals (DSH) are also Medicaid STPs.

(57) [(43)] STAR Program--The State of Texas Access Reform (STAR), means the State of Texas Medicaid managed care program in which HHSC contracts with HMOs to provide, arrange for, and coordinate preventive, primary, and acute care Covered Services to non-disabled children and families, and pregnant women. [The State of Texas Access Reform, which is the name of the State of Texas managed care program established in response to legislative mandate and by federal waiver.]

(58) STAR+PLUS Program--The State of Texas Medicaid managed care program in which HHSC contracts with HMOs to provide and coordinate preventive, primary, acute, and long-term care covered services to persons age 21 years and older with disabilities and elderly persons age 65 and over who qualify for Medicaid through SSI/MAO.

(59) Supplemental Security Income (SSI)--The federal cash assistance program of direct financial payments to the aged, blind, and disabled administered by the Social Security Administration (SSA) under Title XVI of the Social Security Act. All persons who are certified as eligible for SSI in Texas are eligible for Medicaid. Local SSA claims representatives make SSI eligibility determinations. The transactions are forwarded to the SSA in Baltimore, which then notifies the states through the State Data Exchange (SDX).

(60) TDI--Texas Department of Insurance.

(61) Texas Health Steps (THSteps)--The name adopted by the State of Texas for the federally mandated Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program.

(62) Value-Added Services--Additional services for coverage beyond those specified in the Request For Proposal. Value-Added Services must be actual health care services or benefits rather than gifts,

incentives, health assessments or educational classes. Best practice approaches to delivering Covered Services are not considered Value-Added Services.

§353.3. Experience Rebate in the Managed Care Program [STAR and STAR+Plus Programs].

(a) Each health maintenance organization (HMO) participating in the State of Texas Access Reform (STAR) and the State of Texas Access Reform Plus (STAR+Plus) program must pay to the state an experience rebate calculated according to the graduated rebate method described in subsection (b) of this section. The experience rebate is based on the excess of allowable HMO revenues, as defined by the state, over allowable HMO expenses, as defined by the state, as reviewed and confirmed by the state and as specified in the contract between HHSC and the HMO.

(b) The graduated rebate method is as follows:

(1) The HMO retains 100 percent of that portion of excess allowable revenues that falls between zero and less than or equal to three percent of total allowable revenues.

(2) The HMO retains 75 percent of that portion of excess allowable revenues that falls between three percent and less than or equal to seven percent of total allowable revenues. The remaining 25 percent is paid to the state.

(3) The HMO retains 50 percent of that portion of excess allowable revenues that falls between seven percent but less than or equal to 10 percent of total allowable revenues. The remaining 50 percent is paid to the state.

(4) The HMO retains 25 percent of that portion of excess allowable revenues that falls between 10 percent but less than or equal to 15 percent of total allowable revenues. The remaining 75 percent is paid to the state.

(5) The HMO pays to the state 100 percent of that portion of excess allowable revenues that is greater than 15 percent of total allowable revenues.

(6) The state reserves the right to modify the rebate method in this subsection for purposes of establishing incentive programs to encourage HMO's to meet or exceed goals and objectives of the Medicaid Managed Care Program established by the Commission through its contract.

(c) The experience rebate is based on a pre-tax basis.

(d) Losses incurred for one contract period can only be carried forward to the next contract period.

(e) There are two settlements for payment of the experience rebate, which will be paid by the HMO to the state as prescribed by the state. The state reserves the right to make corrections to the settlements based on an audit/review by the state or other documentation acceptable to the state. The state may also adjust the experience rebate if the state determines that the HMO paid affiliates amounts for goods or services that are higher than the fair market value of the goods and services in the service area.

(f) Effective for the SFY 2003 contract period, the tiered methodology is applied to the sum of the Net Income Before Taxes for all STAR, STAR+PLUS HMO, and Children's Health Insurance Plan (CHIP) service areas.

(g) [(f)] HHSC is the [The state has the] final authority in assessing the amount of the experience rebate.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 10, 2005.

TRD-200500090

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 424-6900

SUBCHAPTER B. PROVIDER AND MEMBER EDUCATION PROGRAMS

1 TAC §§353.101, 353.102, 353.104, 353.105

Statutory Authority

The amendments to the rules are proposed under the Texas Government Code, §531.033, which provides the Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The proposed amendments affect the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§353.101. Purpose.

This subchapter implements the Health and Human Services Commission's authority to establish provider and member education requirements for managed care organizations participating in the state Medicaid program. This authority is granted in Government Code §531.0211 (Relating to Medicaid Managed Care Program: Rules; Education Programs). [Texas Civil Statutes, Article 4413(502), §16, reprinted as Government Code, Chapter 531, §531.021.]

§353.102. Provider and Member Education Programs Generally.

The managed care organizations that contract with the Health and Human Services Commission [Texas Department of Health] to provide health care services through the Medicaid program must [shall] provide education programs for providers and members using a variety of techniques and media as described in this chapter and in the contract between the Health and Human Services Commission [Texas Department of Health] and the managed care organization.

§353.104. Member Education Program.

A member education program must present information in a manner that is easy to understand. In addition to any requirements specified in the contract between the managed care organization and the Health and Human Services Commission [Texas Department of Health], a program must include, at a minimum, information on:

(1) a member's rights and responsibilities under the Bill of Rights and the Bill of Responsibilities [bill of rights and the bill of responsibilities] prescribed in Subchapter C of this chapter [by this chapter];

(2) how to access health care services, including how to access behavioral health services;

(3) how to access complaint and appeal procedures, the member's right to request a fair hearing, and the process for requesting a fair hearing. [and the member's right to bypass the managed care organization's internal complaint system and use the notice and appeal procedures otherwise provided by the Medicaid program];

(4) Medicaid policies, procedures, eligibility standards, and benefits;

(5) the policies and procedures of the managed care organization; and

(6) the importance of prevention, early intervention and appropriate use of services.

§353.105. Provider Education Program.

In addition to any requirements specified in the contract between the managed care organization and the Health and Human Services Commission [Texas Department of Health], a provider education program must include, at minimum, information on:

(1) Medicaid policies, procedures, eligibility standards and benefits;

(2) the specific problems and needs of Medicaid clients;

(3) screening, identification and referral processes for coordinating behavioral health and other health care services; and

(4) members' rights and responsibilities set out in subchapter C of this chapter, relating to Medicaid Members' Bill of Rights and Responsibilities [the rights and responsibilities of members under the bill of rights and the bill of responsibilities prescribed by this section].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 10, 2005.

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Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

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1 TAC §353.103

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

Statutory Authority

The repeal is proposed under the Texas Government Code, §531.033, which provides the Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC

with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The proposed repeal affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§353.103. Contract Compliance.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Aragón

Chief Counsel

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SUBCHAPTER C. MEMBER BILL OF RIGHTS AND RESPONSIBILITIES

1 TAC §§353.201 - 353.203

Statutory Authority

The amendments to the rules are proposed under the Texas Government Code, §531.033, which provides the Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The proposed amendments affect the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§353.201. Purpose.

This subchapter implements the Health and Human Services Commission's authority to adopt a member bill of rights and responsibilities. This authority is granted in Government Code §531.0211 (relating to Medicaid Bill of Rights and Bill of Responsibilities). [Texas Civil Statutes, Article 4413(502), §16, reprinted as Government Code, Chapter 531, §531.021.]

§353.202. Member Bill of Rights.

Each managed care organization participating in the state's Medicaid program shall provide to each member an easy-to-read, written document describing the Member's rights, which must include the following [stating]:

Figure: 1 TAC §353.202

§353.203. Member Bill of Responsibilities.

Each managed care organization participating in the state's Medicaid program shall provide to each member an easy-to-read, written document stating:

Figure: 1 TAC §353.203

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 424-6900



1 TAC §353.204

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

Statutory Authority

The repeal is proposed under the Texas Government Code, §531.033, which provides the Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The proposed repeal affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§353.204. Construction.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Chief Counsel

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SUBCHAPTER D. TELEPHONE-BASED HEALTH CARE SYSTEMS PILOT PROGRAM

1 TAC §§353.301 - 353.304

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

Statutory Authority

The repeals are proposed under the Texas Government Code, §531.033, which provides the Commissioner of HHSC with broad rulemaking authority; the Human Resources Code,

§32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The proposed repeals affect the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§353.301. Purpose.

§353.302. Pilot Program Study.

§353.303. Federal Waiver.

§353.304. Expiration

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 10, 2005.

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Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 424-6900



SUBCHAPTER E. STANDARDS FOR THE STATE OF TEXAS ACCESS REFORM (STAR)

1 TAC §353.401, §353.402

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

Statutory Authority

The repeals are proposed under the Texas Government Code, §531.033, which provides the Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The proposed repeals affect the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§353.401. General Provisions.

§353.402. Definitions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 10, 2005.



SUBCHAPTER E. STANDARDS FOR MEDICAID MANAGED CARE

**1 TAC §§353.403, 353.405, 353.407, 353.409, 353.411,
353.413, 353.415, 353.417, 353.419**

Statutory Authority

The amendments to the rules are proposed under the Texas Government Code, §531.033, which provides the Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The proposed amendments affect the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§353.403. *Enrollment.*

(a) For purposes of this section, Health Plan includes Primary Care Case Management (PCCM) and health maintenance organizations (HMO) [For the purposes of this section, a managed care organization (MCO) includes a primary care case management (PCCM) provider network].

(b) The Commission will [department shall] determine which Medicaid eligible clients residing in a Medicaid Managed Care [STAR Program] service area will be mandatory or voluntary members and which Medicaid eligible clients may be excluded from participation in managed care.

(c) The Commission [department] or its designee will [shall] conduct enrollment and disenrollment activities. [or contract with another agency or contractor to assume administration of these functions.] The Commission [department] may not contract with a participating managed care organization to serve as the administrator for enrollment or disenrollment activities in any area of the state.

(d) The Commission will [department shall] establish procedures for enrollment into participating Health Plans [MCOs] and with primary care providers (PCPs), including enrollment periods and time limits within which enrollment must occur. Members who are mandatory members must select a Health Plan and [an MCO or] PCP within the time period allowed by the department or be defaulted to a Health Plan and [an MCO or] PCP.

(e) Mandatory members who fail to select a Health Plan [an MCO] or PCP during the period established by the Commission [department] will have a Health Plan [an MCO] or PCP selected for them by the Commission [department] or its designee [contractor] using criteria determined by the Commission [department]. The Commission [department] shall establish a detailed default methodology that incorporates the following requirements.

(1) A member who does not select a PCP and Health Plan [MCO] will be assigned a PCP and Health Plan [MCO] through the default process established by the Commission [department]. A member who selects a Health Plan [an MCO] but not a PCP, will be assigned to the selected Health Plan [MCO] and the member will be assigned to a PCP through the default process. A member who selects a PCP but not a Health Plan [an MCO] will be assigned to the PCP chosen by the member, subject to PCP restrictions on client age, gender, and capacity, and the member will be assigned to a Health Plan [an MCO] through a manual default process that is established by the Commission [department based on the provisions of paragraph (6) of this subsection].

(2) Each member, who has not selected a PCP, will be defaulted to the PCP with whom there is the most recent Medicaid managed care encounter history. The number of encounters between the member and the PCP may also be considered.

(3) If there is no Medicaid managed care encounter history, each member will be defaulted to the PCP with whom there is the most recent traditional Medicaid claims history. The number of prior encounters between the member and the PCP may also be considered.

(4) If a member does not have history with a PCP, the member will be defaulted to a PCP on the basis of geographic proximity to the PCP.

(5) The Commission [department] may identify other criteria to be used along with the criteria based on geographic proximity such as, but not limited to, capacity of the PCP, PCP performance, and greatest variance between the percentage of elective and default enrollments (with the percentage of default enrollments subtracted from the percentage of elective enrollments).

(6) The Commission will [department shall] develop a methodology for assignment of defaults to each Health Plan [MCO] in the service area. Such methodology may be based on Health Plan [MCO] performance, the greatest variance between the percentage of elective and default enrollments (with the percentage of default enrollments subtracted from the percentage of elective enrollments), or other factors determined by the Commission [department].

(7) Members who cannot be assigned to a PCP and Health Plan [MCO] on the basis of an automated default process may be assigned through a manual default process determined by the Commission [department].

(8) Members with special medical needs may be defaulted on the basis of a manual default methodology if such members can be identified and if the automated default process cannot be administered for such members.

(9) A member who is defaulted to a PCP who is contracted with only one Health Plan will [MCO shall] be assigned to that Health Plan [MCO].

(10) PCP restrictions on Client age, gender, and capacity will [shall] be considered as limitations to default assignments to PCPs.

(11) Family members shall be defaulted to the same PCP and Health Plan [MCO] to the maximum extent possible within the limitation of PCP restrictions on client age, gender, and capacity by Health Plan [MCO] as well as geographic proximity [considerations].

(12) The detailed default methodology developed by the Commission will [department shall] be fully applicable to each Health Plan [MCO] in the Medicaid managed care program by service area. However, the number of defaults assigned to the state administered PCCM network will be restricted as follows:

(A) If a Member is defaulted to a PCP who is contracted only with the PCCM program, the Member will be defaulted to the PCCM program;

(B) If a Member is defaulted to a PCP who is contracted with the PCCM program and an HMO, the Member will be defaulted to the HMO;

(C) If a member is defaulted to a PCP who is contracted with the PCCM program and two or more HMOs, the member will be defaulted to one of the HMOs on the basis of paragraph (6) of this subsection;

(D) A member will be defaulted to the PCCM program if a PCCM provider is the only PCP within reasonable geographical proximity to the member as defined by the Commission [department].

(f) A member may request to change Health Plan [MCOs] at any time and for any reason, regardless of whether the Health Plan [MCO] was selected by the member or assigned by the Commission [department]. Disenrollment will take place no later than the first day of the second month after the month in which the member has requested termination. Health Plans [MCOs] must inform members of disenrollment procedures at the time of enrollment. Health Plans [MCOs] must notify members in appropriate communication formats.

(g) The Commission [department] shall establish limits for the number of members each PCP may accept to ensure members have reasonable access to the provider. The Commission [department] shall develop criteria to allow exceptions to this limit on a case-by-case basis, provided the exceptions do not adversely affect member access.

{(h) The department may not enroll any Medicaid eligible recipient who is excluded from participation by federal rule or regulation.}

(h) [(i)] Recipients who are located more than 30 miles from the nearest PCP in a Health Plan [an MCO] cannot be enrolled in the Health Plan [MCO] unless an exception is made by the Commission [department].

{(j) Medicaid recipients and Medicare beneficiaries must constitute less than 75% of the total enrollment of an MCO, unless the MCO has received a waiver for this requirement under 42 Code of Federal Regulations §434.26.}

(i) The Commission has the option to implement a modified default process of member enrollment for a period not to exceed 6 months, when contracting with new Health Plan or when implementing managed care in a new service area.

§353.405. *Marketing.*

(a) Health Maintenance Organizations (HMOs) [Managed care organizations (MCOs)] must submit a marketing plan and all marketing materials to the Commission [department] for prior written approval.

(b) HMO's [MCOs] may present their marketing materials to eligible Medicaid clients through any method or media determined to be acceptable by the Commission [department]. The media may include, but are not limited to: written materials, such as brochures, posters, or fliers, which can be mailed directly to the client or left at HHSC [Texas Department of Human Services] eligibility offices; Commission-sponsored [department-sponsored] community enrollment events; and public service announcements on radio.

(c) HMO [MCO] enrollment or marketing representatives are required to complete the Commission's [department's] marketing orientation and training program prior to engaging in marketing activities on behalf of the HMO [MCO].

(d) Prohibited marketing practices.

(1) HMOs [MCOs] and providers shall not conduct any direct contact marketing except through Commission-sponsored [department-sponsored] enrollment events.

(2) HMOs [MCOs] and providers shall not make any written or oral statement containing material misrepresentations of fact or law relating to their plan or the Medicaid Managed Care [STAR] Program.

(3) HMOs [MCOs] and Providers shall not make false, misleading or inaccurate statements relating to services or benefits, providers, or potential providers through their plan.

(4) HMOs [MCOs] and providers shall not offer Medicaid recipients material or financial gain as an inducement for enrollment, unless an exception is made by the Commission [department].

(5) Marketing or enrollment practices of HMOs [MCOs] and providers shall not discriminate against a client because of a client's race, creed, age, color, religion, national origin, ancestry, marital status, sexual orientation, physical or mental disability, health status, or existing need for medical care.

§353.407. *Requirements [Selection] of Health Maintenance Organizations [Managed Care Organizations (MCO)].*

(a) An entity or person that contracts with the Commission [department] under a federal waiver to provide or arrange for services under this subchapter on a comprehensive risk [comprehensive] basis [; as defined at 42 CFR 434.21(b); must be an MCO as defined in this subchapter].

(b) Entities or individuals who subcontract with a health maintenance organization (HMO) [an MCO] to provide benefits, perform services, or carry out any essential function of the HMO [MCO] contract shall meet the same qualifications and contract requirements as the HMO [MCO] for the service, benefit, or function delegated under the subcontract.

(c) The Commission will [department shall] require all HMOs [MCOs] to comply with the Commission's [department's] policy on contracting and subcontracting with historically underutilized businesses (HUBs). The Commission's [department's] policy is to meet the goals and good faith effort requirements as stated in the Texas Building and Procurement Commission rules at 1 TAC §§111.11-111.28, relating to Historically Underutilized Business Program [General Services Commission rules, at 1 Texas Administrative Code (TAC) §§111.11-111.24].

§353.409. *Scope of Services.*

(a) All health maintenance organizations (HMOs) [Managed Care Organizations (MCO)] shall provide services and benefits available to Medicaid clients [recipients] under the [purchased or fee for service] Medicaid program, as defined in Chapter 354 of this title, relating to Medicaid Health Services, except services that [which] are excluded from the Medicaid Managed Care [STAR] Program [or by contract].

(b) The Commission will [department shall] establish the scope and level of benefits, which all HMOs [MCOs] must agree to provide as a condition for participation. These requirements may exceed the scope and level of covered benefits and services available to [purchased or] fee-for-service Medicaid Clients [recipients]. These requirements will [shall] be contained in all contracts entered into by an HMO [MCOs] and the Commission [department].

(c) HMOs [MCOs] are encouraged to provide any value-added services or benefits beyond the level and scope required as a condition for participation in the competitive procurement process. [Any services

or benefits offered by an MCO beyond those required by the state will be considered as a selection factor during the competitive procurement process. These services or benefits can be any that may make member access to services easier; increase the quality or timeliness of services or benefits offered members; or increase the scope of services offered by the MCO.] These services and benefits cannot increase the cost borne or capitation rates paid by the Commission [department] during any current contract term or in any subsequent contract term. These services or benefits cannot violate any other state or federal rule or regulation.

§353.411. *Accessibility of Services.*

(a) Health maintenance organizations (HMO) [Managed care organizations (MCO)] must provide a broad-based and accessible primary care provider (PCP) network within the service area to ensure member accessibility to providers in time, distance, cultural competency and language.

(b) HMOs [MCOs] must [shall] have pediatric and family practitioner PCPs in their network of providers in sufficient numbers to provide regular and preventive pediatric care and THSteps services to all eligible children enrolled in the service area.

(c) HMOs [MCOs] must [shall] have PCPs and acute care hospitals available throughout the service area to ensure that no member must travel more than 30 miles to access the PCP, unless an exception has been made by the Commission [department].

(d) HMOs [MCOs] must [shall] have PCPs in sufficient numbers to ensure [that PCPs do not exceed the maximum allowable enrolled members,] that no member must wait an unreasonable amount of time for an appointment, and that no member must wait an unreasonable amount of time to be seen at their appointed time.

(e) HMOs [MCOs] must [shall] ensure the reasonable availability and accessibility of specialists in all areas of medical and behavioral health practice. Specialists must also be reasonably accessible to members in time, distance, cultural competency and language.

(f) A member must [shall] not be required to travel in excess of 75 miles to secure initial contact with referral specialists; special hospitals; psychiatric hospitals; diagnostic and therapeutic services; and single service health care physicians, dentists or providers except as provided in subsections (g) and (h) of this section.

(g) If any service or provider is not available to a member within the mileage radius specified in subsection (f) of this section, the HMO [MCO] must [shall] submit to the Commission [department] for approval health care utilization data that indicate [which indicates] a normal pattern for securing health care services within the service area.

(h) The provisions in subsection (f) of this section do not preclude an HMO [MCO] from making arrangements with another source outside the service area for members to receive a higher level of skill or specialty than the level that is available within the HMO [MCO] service area such as, but not limited to, treatment of cancer, burns, and cardiac diseases.

(i) HMO [MCOs] must [shall] provide education and training to providers on the specific health and behavioral health problems and needs of Medicaid Managed Care [STAR] Program members, and the contract and rule requirements for accessibility and availability. HMOs [MCOs] and the Commission [department] shall cooperate and coordinate education and training activities for providers.

(j) HMOs [MCOs] must develop a written cultural competency plan describing how the HMO [MCO] will effectively provide health care services to members from varying cultures, races, ethnic backgrounds and religions to ensure those characteristics do not

pose barriers to gaining access to needed services. As part of the requirement to develop the cultural competency plan, the HMO [MCO] must at a minimum:

(1) employ multi-cultural and multi-lingual staff;

(2) make available interpreter services for members as necessary to ensure availability of effective communication regarding treatment, medical history or health education;

(3) display to HHSC [the department] through the written plan a method for incorporating the plan into the HMOs [MCOs] policy-making process, administration, and daily practices; and

(4) submit the written plan to HHSC [the department] for review and approval at intervals specified by the department.

(k) HMOs [MCOs] must ensure that communication or physical access barriers do not deter members' timely access to health care services. The HMOs [MCOs] shall provide information in appropriate communication formats, including formats accessible to people with disabilities.

(l) HMOs [MCOs] are prohibited from excluding Significant Traditional Providers [significant traditional Medicaid providers] from their network for a period of time and under conditions determined by the state and specified in the contract.

(m) HMOs [MCOs] must [shall] develop written provider manuals clearly stating the policies and procedures adopted by the HMO [MCO] to meet the provider's duties and obligations required by these and other agency rules and the contract.

§353.413. *Managed Care Benefits and Services for Children Under 21 Years of Age.*

(a) The Commission [department] will [shall] require all participating health maintenance organizations (HMOs) [managed care organization (MCO)] to provide comprehensive, timely and cost-effective diagnostic, screening and treatment services for [of] the medical, vision, hearing, and dental needs of [eligible] Medicaid Managed Care [STAR] Program members under the age of 21, at a level and frequency that meet the requirements of the federal EPSDT Program, as determined by the Commission [found at 42 United States Code §1396d(r) and the Texas Health Steps Program (THSteps) found at Chapter 33 of this title (relating to Early and Periodic Screening, Diagnosis and Treatment)]. These requirements will be contained in all contracts.

(b) The Commission will [department shall] require each HMO [the MCOs] to make available special training about THSteps benefits and goals to all providers of health and dental services contracting with the HMO [MCO], to providers' staffs, and to all employees and contractors of the HMO [MCO] who will provide oral presentations or marketing to members or prospective members. To fulfill this requirement, the HMOs [MCOs] may use the training programs created by the Commission [department] or its contractors, or they may create their own training programs. Any training program created by the HMO [MCO] under this subsection must meet the requirements of [the department] and be approved by the Commission [department].

(c) HMOs must [MCOs shall] coordinate and cooperate with the Commission [department] in developing effective outreach, access, and monitoring systems to ensure that all qualified members receive THSteps benefits.

(d) The managed care programs of participating HMOs [MCOs] are intended to complement and enhance the effectiveness and availability of THSteps benefits in the service areas. The Commission may [department shall] not delegate the responsibility and

accountability for monitoring and [for] ensuring that THSteps benefits are available and accessible to all eligible children.

§353.415. Member Complaint Procedures.

(a) Health maintenance organizations (HMO) must [Managed care organizations (MCO) shall] develop and maintain a system and process for taking, tracking [tracing], reviewing, and reporting member complaints.

(b) HMOs must [MCOs shall] establish and maintain internal procedures for the resolution of member complaints. The procedures must be in writing. The procedures must be detailed and specific regarding how complaints are to be taken, to whom complaints are referred, and by when a complaint must be resolved.

(c) HMOs must [MCOs shall] establish a procedure to assist members in understanding and using the HMOs [MCOs] internal complaint process. The members' complaint procedure must be in writing and distributed to each member upon enrollment. The member must also receive written notice of the procedure each time the member's benefits are being reduced, denied, or terminated for any reason. The procedure must be easy for members to understand and simple to follow. The procedure must contain a prominent notice to the Member that he or she retains all rights as Medicaid Clients [recipients] to a fair hearing through the Commission [department], in addition to the HMOs [MCOs] complaint process. The HMO notice to the Member should comply with the Fair Hearing rules found at Chapter 357 of this title, relating to Fair Hearings.

(d) The Commission will [department shall] review the HMOs [MCO's] complaint procedures to determine if they comply with HHSC's [the department's] standards before HHSC approves use of the procedures [approval for MCO use of the complaint procedure is given by the department]. Reports containing complaint summaries must [shall] be submitted to the Commission [department] in compliance with Commission's [department] policy.

(e) The Commission [department] shall retain the authority to make the final decision following the Commission's [departments] fair hearing process.

§353.417. Quality Assessment and Performance Improvement [Improvement].

(a) Each health maintenance organization (HMO) must develop and implement an ongoing quality assessment and performance improvement program for services it furnishes to its enrollees. The HMO must maintain and provide documentation of its compliance for the Commission's review, including performance measurement data. The HMO's quality assessment and performance improvement program must meet the requirements contained in 42 CFR §438.240 and, at a minimum, include:

(1) a program of performance improvement projects that focus on clinical and non-clinical areas;

(2) mechanisms to assess the quality and appropriateness of care furnished to enrollees with special health care needs;

(3) mechanisms to detect both under and over-utilization of services;

(4) practice guidelines that meet CMS requirements under 42 CFR §438.236.

((a) Each managed care organization (MCO) shall develop and follow quality standards based on current Quality Assurance Reform Initiative (QARI) and Health Plan Employer Data and Information Set (HEDIS) guidelines as a minimum requirement of its internal quality improvement program (QIP). MCOs shall establish a QIP system that includes at least the following:)

((1) a system of oversight and supervision for the MCO quality improvement (QI) processes;)

((2) an independent organizational structure within the MCO responsible for performing QI functions. This organization must meet operational and documentation requirements of the department, including the requirement that membership includes Medicaid managed care members and members with disabilities or a chronic or complex condition;)

((3) written contracts for all QI functions subcontracted to outside contractors;)

((4) written policies and procedures for ensuring providers in the MCO's network are qualified and properly credentialed, and a system to periodically update and review qualifications and credentials of all providers;)

((5) policies and procedures for disciplinary actions against providers and an appeal process for providers who have disciplinary action taken against them;)

((6) a procedure for informing MCO members of their rights and responsibilities, benefits and services, MCO policies, and other information required in the Texas Health and Human Services Commission's rules on client education and member bill of rights and responsibilities, and the MCO contract with the department;)

((7) performance standards for the availability of and accessibility to routine and emergency care, referral to specialists, and telephone services;)

((8) time standards within which providers must respond to the medically necessary physical and behavioral health needs of the members;)

((9) standards for the confidentiality, accessibility, and availability of medical records;)

((10) a written utilization review and management program which gives guidelines and criteria for determining medical necessity, preauthorization, and utilization of services;)

((11) an effective referral and coordination of care system to ensure comprehensive and coordinated care for members through the PCPs; and)

((12) a complaint system for members as described in §30.29 of this title (relating to Member Complaint Procedures).)

(b) The Quality Performance Assessment Improvements (QAPI) [QIP] functions may be subcontracted but the responsibility for QAPI [QIP] compliance cannot be delegated by the HMO [MCO].

(c) The Commission will [department shall] develop monitoring and review systems and procedures to ensure HMO [MCO] compliance with HMO [MCO] contracts, this subchapter, and all related state and federal rules, regulations, and guidelines. Commission [Department] monitoring and review will [shall] include, but not be limited to, the following.

(1) The Commission will [department shall] monitor each HMO [MCO] to ensure it is following its QAPI [QIP] standards.

(2) The Commission will [department shall] require HMO [MCOs] to submit QAPI [QIP] information at regular and periodic intervals.

(3) The Commission will [department shall] require all HMOs [MCOs] to submit to periodic inspection and review to determine compliance with all contract terms, and state and federal rules, regulations, and policies.

(d) Evaluations of each HMOs [MCO's] quality of services in each Medicaid managed care service area and the cost-effectiveness, member access, and quality of care under each waiver shall be conducted by independent, external entities after initial implementation of Medicaid managed care in a particular service delivery area. The quality evaluation must be conducted at the end of the first year following initial implementation; and the assessment of cost-effectiveness, member access, and quality of care under each waiver must be conducted once during the first two years of the time period for which a waiver has been approved. The Commission will reevaluate the periodicity of both evaluation types after each evaluation is initially completed in a managed care service delivery area.

§353.419. *Financial Standards.*

(a) Health maintenance organizations (HMO) [Managed care organization (MCO)] must meet solvency standards established by the Texas Department of Insurance at 28 TAC Chapter 11, Subchapter S, and by the Commission [department] in its competitive procurement proposals.

(b) The Commission may share in the experience rebates in accordance with §353.3, Experience Rebate in Managed Care Organization [The state may share in profits realized by MCOs providing services on a risk basis at a rate determined by the department, as long as the profit-sharing arrangement complies with federal law and is contained in the contract between the MCO and the department].

(c) The Commission [department] may establish incentive payment programs to encourage HMOs [MCOs] to meet or exceed the goals and objectives of the Medicaid Managed Care [STAR] Program established by the Commission [department] through its contract.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 10, 2005.

TRD-200500097

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 424-6900

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TITLE 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 402. BINGO REGULATION AND TAX

The Texas Lottery Commission (Commission) proposes new §§402.100 - 402.103, 402.200 - 402.203, 402.300 - 402.304, 402.400 - 402.407, 402.500 - 402.504, 402.600 - 402.603, and 402.700 - 402.705. These new Bingo Regulation and Tax provisions will make nonsubstantive changes, including: (1) renaming Chapter 402 the "Charitable Bingo Administrative Rules"; (2) reorganizing Chapter 402 into subchapters; (3) updating legal citations; and (4) deleting references to obsolete dates.

The Commission will publish the repeal of Chapter 402 by separate action.

The new rules are structured into seven subchapters. Subchapter A, §§402.100 - 402.103, Administration; Subchapter B, §§402.200 - 402.203, Conduct of Bingo; Subchapter C, §§402.300 - 402.304, Bingo Games and Equipment; Subchapter D, §§402.400 - 402.407, Licensing Requirements; Subchapter E, §§402.500 - 402.504, Books and Records; Subchapter F, §§402.600 - 402.603, Payment of Taxes, Prize Fees and Bonds; and Subchapter G, §§402.700 - 402.705, Compliance and Equipment. These rules are promulgated under Occupations Code, §2001.054, which authorizes the Commission to adopt rules necessary to enforce and administer the Bingo Enabling Act.

Lee Deviney, Financial Administration Director, has determined there will be no significant fiscal impact for state or local government as a result of the proposal and subsequent adoption of the new Chapter 402. Any costs to the State could be absorbed by current resources. For each year of the first five years the new chapter will be in effect, the fiscal impact is the following: FY 05, \$0, FY 06, \$0; FY 07, \$0; FY 08, \$0, FY 09, \$0. Additionally, there will be no effect on small businesses, micro businesses or local or state employment.

William L. Atkins, Director, Charitable Bingo Operations Division, has determined that for each of the first five years the new Chapter 402 as proposed is in effect, the public will benefit from the adoption.

Comments on the proposed new rules may be submitted to Sandra Joseph, Assistant General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630. The Commission will hold a public hearing on this proposal at 10:00 a.m. on February 3, 2005. Comments must be received within 30 days after publication of these proposed new rules in order to be considered.

SUBCHAPTER A. ADMINISTRATION

16 TAC §§402.100 - 402.103

The new sections are proposed pursuant to Occupations Code, §2001.054, which authorizes the Commission to adopt rules necessary to enforce and administer the Bingo Enabling Act.

Occupations Code, Chapter 2001 is affected by the proposed new sections.

§402.100. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Bingo premises--The area subject to the direct control of, and actual use by, a licensed authorized organization for the purpose of conducting a game of bingo.

(2) Break-open bingo ticket--An instant bingo card commonly known as an instant bingo ticket, pull-tab bingo game or instant bingo card as defined by §402.300 of this chapter.

(3) Calendar week--A period of seven consecutive days commencing with Sunday and ending with Saturday.

(4) Calendar year--A period of 12 consecutive months commencing with January 1 and ending with December 31.

(5) Card-minding device--Any mechanical, electronic, electromechanical or computerized device, and including related hardware and software, that is interfaced with or connected to equipment

used to conduct a game of bingo and which allows a player to store, display, and mark a bingo card face five spaces wide by five spaces long, the center space free, and the other spaces containing pre-printed numbers between 1 and 75, inclusive. A card-minding device shall not be a video lottery machine as defined by H.B. 3021, §10, 74th Leg. R.S., 1995.

(6) Commission--The Texas Lottery Commission, the agency created by H.B. 54, 72nd Leg., 1st C.S. (1991), as amended by H.B. 1587 and H.B. 1013, 73rd Leg. R.S., 1993.

(7) Conductor--A licensed authorized organization.

(8) Director--The Director of the Charitable Bingo Operations Division, commonly known as the bingo division, of the Commission.

(9) Executive Director--The Executive Director of the Commission.

(10) Instant bingo card--An instant bingo ticket, pull-tab bingo game, break-open bingo ticket or instant bingo card as defined by §402.300 of this chapter.

(11) Instant bingo ticket--An instant bingo card commonly known as a break-open bingo ticket, a pull-tab bingo game or an instant bingo card as defined by §402.300 of this chapter.

(12) Location--The area subject to the direct control of, and actual use by, a licensed authorized organization for the purpose of conducting a game of bingo.

(13) Operator--A natural person designated pursuant to authority of the Bingo Enabling Act.

(14) Place--The area subject to the direct control of, and actual use by, a licensed authorized organization for the purpose of conducting a game of bingo.

(15) Primary business office--The physical location at which all records relating to the primary purpose(s) of a licensed authorized organization are maintained in the ordinary course of business.

(16) Pull-tab bingo game--An instant bingo card commonly known as a break-open bingo ticket, an instant bingo ticket or an instant bingo card as defined by §402.300 of this chapter.

(17) 24-hour period--A period of 24 consecutive hours commencing at 12:00 midnight.

(18) Working day--Other than a Saturday, Sunday or holiday authorized by law, a period of nine consecutive hours commencing at 8:00 a.m. and ending at 5:00 p.m.

§402.101. Advisory Opinions.

(a) Time Period

(1) The Commission shall respond to an advisory opinion request not later than the 60th day after the later date of when the Commission receives the written request containing sufficient facts or receives the additional information pursuant to a request for additional information to provide an answer on which the requestor may rely. However, if the Commission requests an attorney general opinion on a matter that is the subject of an advisory opinion request the deadlines are tolled until 30 days following the issuance of the attorney general opinion.

(2) The Commission shall notify the person making the request of the date the advisory opinion request is received and of the advisory opinion number.

(3) The authority granted by Occupations Code, §2001.059, is delegated to the Charitable Bingo Operations Director or his designee. The General Counsel must approve the advisory opinion prior to the issuance of the advisory opinion by the Charitable Bingo Operations Director. The Commission by separate order may delegate to an employee of the Commission the authority granted.

(4) The Commission retains the authority to issue advisory opinions pursuant to Occupations Code, §2001.059. The delegation of authority merely augments the Commission's ability to perform the duties and functions of the Commission with respect to issuing advisory opinions.

(b) Request for an Advisory Opinion

(1) A person requesting an advisory opinion shall do so by sending the request in writing addressed to Advisory Opinion, Charitable Bingo Operations Division, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630 or by e-mail to Advisory.Opinion@lottery.state.tx.us.

(2) A request for an advisory opinion shall describe a specified factual situation. The request shall make clear that it is a request for an advisory opinion under Occupations Code, §2001.059, and state in sufficient detail all facts upon which the request for opinion is based to permit the Commission to provide a response to the request and shall contain the name and address of the person requesting the opinion. The request may be accompanied by supporting legal arguments and citations of law or rules as the requesting person deems pertinent. Any other person may also submit legal arguments, citations of law or rules, or legal briefs within 30 days of the date of the request for opinion.

(c) Request for Additional Information

(1) If the Commission determines that the request for an advisory opinion does not contain sufficient facts to provide an answer, the Commission shall request additional written information from the requestor not later than ten days after the request for advisory opinion was received by the Commission.

(2) If no additional information is supplied in response to the Commission request for additional written information from the requestor, after the Commission determines that the request does not contain sufficient facts to provide an answer, then no opinion can be issued and the advisory opinion request file will be closed. In this instance, the requestor will be given a statement that no opinion can be expressed with regard to a given fact situation due to the failure to supply additional information.

(3) The response to a Commission request for additional information shall be addressed to Advisory Opinion, The Charitable Bingo Operations Division, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630 or by e-mail to Advisory.Opinion@lottery.state.tx.us in order to permit the Commission to provide a response to the request.

(d) Subject of an Advisory Opinion

(1) The Commission will not issue an advisory opinion that concerns the subject matter of pending litigation or contested case notice of hearing known to the Commission other than to provide a response which refers to the applicable statutes and rules cited in the pending litigation or contested case proceeding notification.

(2) An advisory opinion cannot resolve a disputed question of fact other than to provide a response which refers to the applicable statutes and rules.

(e) Response

(1) A request for an advisory opinion that contains sufficient facts shall initially be referred to any appropriate personnel within the Charitable Bingo Operations Division for review and written comment.

(2) If the Commission determines that a request for an advisory opinion has already been answered by the Commission, then the Commission may provide a written response to the requestor that cites the prior advisory opinion.

(3) The Commission may publish the response on its website.

(4) The response shall clearly state that the opinion is advisory in nature and is restricted to the fact situation identified in the opinion.

(5) An advisory opinion may be relied upon by the requestor as well as any other person whose conduct is substantially consistent with the opinion and the facts stated in the request.

(6) The Commission cannot grant nor confer legal authority beyond the statute or rule which is the subject of the request for advisory opinion.

(7) A previously issued advisory opinion not in accord with the current Commission statutes and rules may be modified or revoked, but in such an instance the modification or revocation shall operate prospectively only.

§402.102. Bingo Advisory Committee.

(a) Purpose. The purpose of the Bingo Advisory Committee (BAC) is to advise the Commission on the needs and problems of the state's bingo industry; report to the Commission on the committee's activities; and perform other duties as determined by the Commission. The BAC's sole duty is to advise the Commission. The BAC has no executive or administrative powers or duties with respect to the operations of the Charitable Bingo Operations Division; all such powers and duties rest solely with the Commission.

(b) Composition. The following appointments shall be made representing a balance of interests: General Public--one; Charities that operate bingo games--three; Lessor, Charity--one; Lessor, Commercial--two; Distributor/Manufacturer--one; System Service Provider--one.

(c) Nomination and Appointment.

(1) The nomination period will be specified by the Commission. Nominations must be submitted on a form prescribed by the Commission prior to the close of the nomination period. All information requested on the nomination form must be correct and complete.

(2) With the exception of a nominee to the "Lessor, Charity" position, a nominee may not be listed in the licensing information that is required to be filed with the Commission in any other category than the one for which the person is nominated.

(3) A nominee to the "General Public" category may not be listed in the licensing information that is required to be filed with the Commission.

(4) A total of nine members will be appointed by the Commission. Each member will be appointed for a three-year term or until his/her successor has been appointed and will serve at the pleasure of the Commission. Members hold office for staggered terms of three years so that three members' terms expire February 1 of each year.

(5) A person is ineligible to serve as a member of the BAC if he/she represents an organization licensed by the Commission that is

delinquent in any liability to the state or if he/she represents an organization licensed by the Commission that has a license denied, revoked or suspended by the Commission.

(d) Officers. Annually, the BAC shall select from among its members a presiding officer. The presiding officer will conduct meetings and general business. The presiding officer will designate a member of the BAC to conduct meetings and general business in the absence of the presiding officer.

(e) Reports. The Committee will report, at a minimum, quarterly to the Commission on the BAC's activities, and more frequently as deemed appropriate and necessary by the BAC presiding officer. Annually, the BAC will report to the Commission with specific recommendations for improvement, the status of the following areas relating to charitable bingo in Texas:

(1) gross receipts;

(2) charitable distributions;

(3) expenses;

(4) attendance; and

(5) any other area requested by the Commission.

(f) Meetings. The BAC shall meet quarterly or at the call of the Commission. BAC meetings may be held at a location in Texas other than Austin, subject to the discretion of the Charitable Operations Bingo Director. The meetings shall be open meetings in accordance with the Open Meetings Act, Government Code, Chapter 551. The committee shall keep minutes of each meeting. The minutes shall be approved at the next following meeting, shall reflect all formal action taken by the committee, and shall be filed, upon approval, with the Charitable Bingo Operations Director. The BAC may consider a transcript prepared by a court reporter to be the minutes of the meeting.

(g) Attendance. The failure by any BAC member to attend two consecutive regular quarterly meetings, for any reason, may be cause for removal by the Commission. No proxy voting shall be allowed. A member may not substitute another person in his/her absence.

(h) Criminal History Review. All BAC members must meet the criminal history standards set out in Occupations Code, Chapter 2001. A member who fails to meet such criminal history standards will be disqualified from serving on the BAC and will be removed from the BAC. The decision by the Commission to remove a member of the BAC is final.

(i) Compensation and Travel Expenses. A member of the BAC is entitled to reimbursement for reasonable expenses. Reasonable expenses shall be limited to those expenses set out in the current Appropriations Act, shall be reimbursed in accordance with the current Appropriations Act, and shall not exceed the maximum allowed amount as set out in the Comptroller of Public Accounts Travel Guidelines. BAC members shall submit expenses on a form provided by the Commission and shall be accompanied by appropriate receipts. Expenses can be reimbursed to members only if the legislature has specifically appropriated funds for that purpose.

(j) Duration. The BAC will automatically be abolished and cease to exist on August 31, 2005. The BAC shall only remain in existence beyond August 31, 2005, if the Commission affirmatively votes to continue the Bingo Advisory Committee in existence.

(k) Removal. A member of the BAC may be removed if he/she represents an organization licensed by the Commission that is delinquent in any liability to the state or if he/she represents an organization licensed by the Commission that has a license denied, revoked or

suspended by the Commission. The decision by the Commission to remove a member of the BAC is final.

(1) Evaluation of BAC Costs and Effectiveness. The Commission shall evaluate annually:

- (1) BAC's work;
- (2) BAC's usefulness; and
- (3) the costs related to BAC's existence, including the cost of Commission staff time in support of BAC's activities.

§402.103. Training Program.

(a) Notice of Registration and Training.

(1) Notice of the training program will be provided to a licensed authorized organization at the address provided to the Commission by the licensed authorized organization as part of the licensed authorized organization's license file.

(2) The notice will inform the licensee of the training offered in the licensee's geographic area and the process to register for the training. Pre-registration is required in order to attend training. Persons pre-registering must provide, at a minimum, the name of the individual, name of organization, eleven-digit taxpayer identification number of the organization, person's position within the organization, and information on how to contact pre-registrant, such as telephone number, facsimile number, mailing address, and, if applicable, E-mail address.

(3) The training may be cancelled for good cause. In the event the Charitable Bingo Operations Division cancels the training, notice will be provided to licensees who have pre-registered for training.

(b) Persons Required to Complete Training.

(1) At all times, at least one of the persons designated by each licensed authorized organization under Occupations Code, §2001.102(b)(10) must be an individual who has completed the training. The training must be completed biannually.

(2) Multiple persons from a licensed authorized organization may attend training. However, the Charitable Bingo Operations Division may limit the number of persons attending for a licensed authorized organization in order to ensure persons for other licensed authorized organizations have the opportunity to attend training.

(3) Each individual attending the training program must complete an affidavit of attendance, on a form prescribed by the Commission, which will include, at a minimum, the legible name, signature, organization name and eleven-digit taxpayer identification number.

(4) Each individual attending the training shall, prior to the beginning of the training, submit on a form prescribed by the Commission, which will include, at a minimum, the legible name, signature, organization name and eleven-digit taxpayer identification number, a statement that he/she has read the Bingo Enabling Act and Charitable Bingo Administrative Rules in their entirety in preparation for the training. The total number of hours credited for reading these materials shall be three hours.

(5) Only licensed authorized organizations holding an annual license to conduct bingo are required to have an individual attend training.

(6) Persons who satisfactorily complete the training, as determined by the Charitable Bingo Operations Division, will receive a Certificate of Completion. The Certificate of Completion shall, at a minimum, include: the name of the individual completing the training, the date and location of the training, and eleven-digit taxpayer identification number of the licensed authorized organization.

(7) A person may complete training for one licensed authorized organization only.

(8) All expenses or costs of attendance by any member of the licensed authorized organization may be paid from the licensed authorized organization's bingo bank account. Expenses and costs are limited to travel, lodging, meals, and materials. Documentation must be maintained by the licensed authorized organization supporting the payment of all costs or expenses. All costs and expenses must be reasonable and necessary.

(c) The training instructor may remove a person or persons from the training for good cause.

(d) Content of the Training. The training program will cover, at a minimum, the following areas:

(1) General information about the Bingo Enabling Act and Charitable Bingo Administrative Rules;

(2) Conducting a bingo game;

(3) Record keeping requirements;

(4) Administration and operation of charitable bingo;

(5) Promotion of a bingo game;

(6) Bingo Advisory Committee; and

(7) General information about the license application process.

(e) Time requirements.

(1) For the individuals required to complete training, each individual must complete the training every two years.

(2) At least one of the persons designated under Occupations Code, §2001.102(b)(10) must have completed the training within 24 months prior to the date of expiration of the license.

(3) An organization that is issued an annual license to conduct bingo based on the filing of an original application shall have at least one of the persons designated under Occupations Code, §2001.102(b)(10) complete the training within 12 months of the issuance of the license.

(f) Reporting requirements.

(1) Each licensed authorized organization must submit to the Charitable Bingo Operations Division the name(s) of the trained individuals. Any change in this information must be submitted to Charitable Bingo Operations Division within ten days after the date of the change.

(2) Each licensed authorized organization shall maintain for a period of four years the Certification of Completion in its records.

(3) Failure to maintain documentation relating to the training program or failure to timely furnish information requested by the Commission may subject the licensee to disciplinary action.

(4) Altering or falsifying any information required to be submitted or maintained in connection with the training program identified in this rule may subject the licensee to disciplinary action.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 7, 2005.
TRD-200500077

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SUBCHAPTER B. CONDUCT OF BINGO

16 TAC §§402.200 - 402.203

The new sections are proposed pursuant to Occupations Code, §2001.054, which authorizes the Commission to adopt rules necessary to enforce and administer the Bingo Enabling Act.

Occupations Code, Chapter 2001 is affected by the proposed new sections.

§402.200. General Restrictions on the Conduct of Bingo.

(a) Advertising. Any advertising or promotion of a bingo occasion shall clearly identify the conductor, by name as shown exactly as it is shown on the license.

(b) Inspection of equipment, tampering prohibited. All bingo equipment is subject to inspection at any time by any representative of the Commission. No licensee may tamper with or modify any bingo equipment in any manner which would affect the randomness of numbers chosen or which changes the numbers or symbols appearing on the face of a bingo card. A licensed authorized organization has a continuing responsibility to ensure that all bingo equipment used by it is in proper working condition.

(c) Location of bingo occasion. A bingo occasion may be conducted only on premises which are:

- (1) owned by the conductor;
- (2) owned by a governmental agency;
- (3) leased, or used only by the holder of a temporary license; or
- (4) owned or leased by a licensed commercial lessor.

(d) Merchandise prizes. Any merchandise awarded as a prize in a bingo occasion shall be valued at its current retail price. If a merchandise prize is donated to a licensed organization, it may not be reported as an expenditure for any purpose.

(e) Notice of law and regulation. Each conductor shall obtain, maintain, keep current and make available for review to any person upon request a copy of the Bingo Enabling Act and the Charitable Bingo Administrative Rules.

(f) Notification of name of operator. Each conductor shall conspicuously display during all bingo occasions a sign indicating the name of the operator in charge of the occasion. The letters on the sign shall be no less than one inch tall. The sign shall inform the players at that location that they should direct any questions or complaints regarding the conduct of the bingo occasion to the operator listed on the sign. The sign should further state that if the player is not satisfied with the response given by the operator that the player has the right to contact the Commission and file a formal complaint.

(g) Reservation of bingo cards. Except where otherwise expressly permitted by this chapter, no conductor may reserve, or allow to be reserved, any bingo card or cards for use by a bingo player.

(h) Workers and employees prohibited from playing. No bingo occasion shall be continued if, during such occasion, any worker or

employee who is conducting or assisting in the conduct of the occasion participates as a player, either directly or by surrogate.

(i) Verification.

(1) Verification of winning cards. The numbers appearing on the winning card must be verified at the time the winner is determined and prior to prize(s) being awarded in order to insure that the numbers on the card in fact have been drawn from the receptacle. This verification shall be done either in the immediate presence of one or more players at a table or location other than the winners, or displayed on a TV monitor visible by all of the players, or by an electronic verifier system visible by all the players. Each winning disposable paper card or an electronic representation of the card shall also be posted on the licensed premises where it may be viewed in detail by the players until at least 30 minutes after the completion of the last bingo game of that organization's occasion.

(2) Verification of numbers drawn. Any player may request a verification of the numbers drawn at the time a winner is determined and a verification of the balls remaining in the receptacle and not drawn. Verification shall take place in the immediate presence of the operator, one or more players other than the winner, and player requesting the verification.

§402.201. Prohibited Bingo Occasion.

No licensee shall commence or continue a bingo occasion unless an active member that has been designated pursuant to the Occupations Code, §2001.411, is physically present at the bingo premises and is actively supervising and directing the bingo occasion. Any occasion, and any game of bingo, conducted in violation of this provision is a violation of the Bingo Enabling Act.

§402.202. Transfer of Funds.

(a) A licensed authorized organization or an organization applying for a license to conduct bingo may request permission to loan money from its general fund to its bingo account for necessary expenses by submitting a completed Bingo Financial Summary which includes the organization's actual or estimated:

- (1) monthly bingo income;
- (2) monthly bingo expenses;
- (3) employee payroll;
- (4) one time expense;
- (5) amount of funds to be transferred; and
- (6) balance of its general fund prior to the requested transfer of funds.

(b) Prior to approval the Director must find that:

- (1) the loan is necessary;
- (2) the repayment schedule is reasonable; and
- (3) the loan can be repaid within a 12 month period.

(c) The Director may consider the organization's financial condition as reflected in all available information including past quarterly reports prior to the approval of the loan request.

(d) When a loan is approved by the Director, the loan transaction must be reported on the organization's quarterly report as follows:

- (1) the loan transaction must be reported as "Approved Loan Proceed" for the quarter in which the loan was approved; and
- (2) loan payments must be reported as "Loan Repayment" for the quarter in which they are paid.

(e) If the loan is not paid back to the organization's general fund by the later of the renewal date of the license or the time period allowed under subsection (b), then the Charitable Bingo Operations Division may initiate disciplinary action.

§402.203. Unit Accounting.

(a) The provisions of this rule relate only to the accounting, reporting and operation of units in accordance with the Bingo Enabling Act and this chapter. Nothing in this rule shall be construed as a grant of authority or waiver of responsibility under federal law, including tax law, and other state law.

(b) Definitions. In addition to the definitions provided in §402.100 of this chapter, and unless the context in this section otherwise requires, the following definitions apply:

(1) Unit's net proceeds--means the unit's gross receipts less prizes awarded and authorized expenses.

(2) Default--The term used to describe the status of a licensed authorized organization that does not timely pay for the sale or lease of bingo supplies or equipment as provided in Occupations Code, §2001.218.

(c) Licensed authorized organizations forming a unit, must notify the Commission in writing prior to operating as a unit.

(d) Each unit will be assigned an identification number by the Commission.

(e) A licensed authorized organization joining or withdrawing from a unit at any time other than at the beginning or ending of a reporting quarter is responsible for filing a separate quarterly report for bingo activities conducted apart from the unit.

(f) Any change in the membership of a unit will require the unit to notify the Commission within 15 days.

(g) Unit's Use of Proceeds.

(1) All distributions of net proceeds of the unit shall be paid from the unit's bingo account to the account or charitable use designated by the unit member. Each unit member is required to maintain adequate records establishing that the account or use of such net proceeds is used in accordance with Occupations Code §2001.454.

(2) All prize fees collected in accordance with Occupation Code, §2001.502 must be deposited in the unit's bingo bank account and paid from the unit's bingo bank account.

(3) All funds paid to or on behalf of a unit member shall be used in accordance with Occupations Code, §2001.454 and this chapter.

(h) Unit Transactions.

(1) Upon prior written consent by the Commission:

(A) a licensed authorized organization may make a sale of bingo cards, instant bingo tickets, or a used bingo flash board or blower to a unit;

(B) a unit may make a sale of bingo cards, instant bingo tickets, or a used bingo flash board or blower to a licensed authorized organization; or

(C) a unit may make a sale of bingo cards, instant bingo tickets, or a used bingo flash board or blower to another unit.

(2) If a member of a unit is in default, a person may not sell or transfer bingo equipment or supplies to the unit on terms other than immediate payment on delivery, unless otherwise authorized by the Commission.

(i) Unit Recordkeeping.

(1) Each unit must file a quarterly report, on a form prescribed by the Commission and maintain records to substantiate the contents of the report.

(2) A member of a unit which is also licensed as a commercial lessor must continue to file the "Texas Bingo Lessor's Quarterly Report" and remit the taxes on rental income.

(3) Each member of a unit must file a quarterly report, on a form prescribed by the Commission, and maintain records to substantiate the contents of the report.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: February 20, 2005

For further information, please call: (512) 344-5113



SUBCHAPTER C. BINGO GAMES AND EQUIPMENT

16 TAC §§402.300 - 402.304

The new sections are proposed pursuant to Occupations Code, §2001.054, which authorizes the Commission to adopt rules necessary to enforce and administer the Bingo Enabling Act.

Occupations Code, Chapter 2001 is affected by the proposed new sections.

§402.300. Pull-Tab Bingo.

(a) Definitions. The following words and terms, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Bingo Ball Draw--A pulling of a bingo ball(s) to determine the winner of an event ticket by either the number or color on the ball(s).

(2) Deal--A separate and specific game of pull-tab bingo tickets of the same serial number and form number.

(3) Face--The front of a pull-tab bingo ticket, which displays the artwork of a specific game. The front of the pull-tab bingo ticket includes, but is not limited to, the name of the game, the price of the game and the payout structure of the game.

(4) Flare--A poster or placard that must display:

(A) a form number of a specific pull-tab bingo game;

(B) the name of the pull-tab bingo game;

(C) the total card count of the pull-tab bingo game;

(D) the cost per pull-tab bingo ticket;

(E) the number of prizes to be awarded and the corresponding prize amounts of the pull-tab bingo game; and

(F) the name of the manufacturer or trademark.

(5) Form Number--The unique identification number assigned by the manufacturer to a specific pull-tab bingo game. A form

number may be numeric, alpha, or a combination of numeric and alpha characters.

(6) High Tier--The two highest paying prize amounts as designated on the face of the pull-tab bingo ticket and on the game's flare.

(7) Last Sale--The purchaser of the last pull-tab bingo ticket(s) sold in a deal with this feature is awarded a prize or a registration for the opportunity to win a prize.

(8) Merchandise--Any non-cash item(s) provided to a licensed authorized organization that is used as a prize.

(9) Wheels--Devices that determine event ticket winner(s) by a spin of a wheel.

(10) Pay-Out--The total sum of all possible prize amounts in a pull-tab bingo game.

(11) Payout Schedule--A printed schedule prepared by the manufacturer that displays:

(A) the name of the pull-tab bingo game;

(B) the form number of the pull-tab bingo game;

(C) the total card count of the pull-tab bingo game;

(D) the cost per pull-tab bingo ticket;

(E) the number of prizes to be awarded and the corresponding prize amount for each category of the pull-tab bingo game;

(F) the number of winners for each category of prize;

(G) the profit of the pull-tab bingo game;

(H) the percentage of payout or the percentage of profit of the pull-tab bingo game; and

(I) the payout of the pull-tab bingo game.

(12) Payout Structure--The printed information that appears on the face of a pull-tab bingo ticket. This display shows the winnable prize amounts, the winning patterns required to win a prize, and the number of winners for each category of prize.

(13) Prize--An award of collectible items, merchandise, cash, bonus pull-tabs, and additional pull-tab bingo tickets, individually or in any combination.

(14) Prize Amount--The value of cash and/or the fair market value of merchandise which is awarded as a prize. A collectable item is considered merchandise for determining allowable prize amounts. If a manufacturer or distributor supplies a merchandise prize, the manufacturer or distributor must determine the fair market value of the merchandise prize, otherwise the fair market value of a merchandise prize must be determined by the authorized organization.

(15) Reverse--The back of a pull-tab bingo ticket that has a perforated break-open tab(s) that when opened reveals one or more numbers and/or symbols that appear under the tab(s).

(16) Serial Number--The unique identification number assigned by the manufacturer identifying a specific deal of pull-tab bingo tickets. A serial number may be numeric, alpha, or a combination of numeric and alpha characters.

(17) Symbol--A graphic representation of an object other than a numeric or alpha character.

(b) Approval of pull-tab bingo tickets.

(1) A pull-tab bingo ticket may not be sold in the state of Texas, nor furnished to any person in this state nor used for play in

this state until that pull-tab bingo ticket has received approval for use within the state of Texas by the Commission. The manufacturer at its own expense must present their pull-tab bingo ticket to the Commission for approval.

(2) All pull-tab bingo ticket color artwork with a letter of introduction including style of play must be presented to the Commission's Austin, Texas location for review. The manufacturer must submit one complete color positive or hardcopy set of the color artwork for each pull-tab bingo ticket and its accompanying flare. The color artwork may be submitted in an electronic format prescribed by the Commission in lieu of the hardcopy submission. The submission must include the payout schedule. The submission must show the face and reverse sides of a pull-tab bingo ticket and must be submitted on an 8 1/2" x 11" size sheet. The color artwork will show the actual size of the ticket and a 200% size of the ticket. The color artwork will clearly identify all winning and non-winning symbols. The color artwork will clearly identify the winnable patterns and combinations.

(3) The color artwork for each individual pull-tab bingo ticket must:

(A) display in no less than 26-point diameter circle, an impression of the Commission's seal with the words "Texas Lottery Commission" engraved around the margin and a five-pointed star in the center;

(B) contain the name of the game in a conspicuous location on the face of the pull-tab bingo ticket;

(C) contain the form number assigned by the manufacturer in a conspicuous location on the face of the pull-tab bingo ticket;

(D) contain the manufacturer's name or trademark in a conspicuous location on the face of the pull-tab bingo ticket;

(E) disclose the prize amount and number of winners for each prize amount, the number of individual pull-tab bingo tickets contained in the deal, and the cost per pull-tab bingo ticket in a conspicuous location on the face of the pull-tab bingo ticket;

(F) display the serial number where it will be printed in a conspicuous location on the face of the pull-tab bingo ticket. The color artwork may display the word "sample" or number "000000" in lieu of the serial number;

(G) contain graphic symbols that preserve the integrity of the Commission. The Commission will not approve any pull-tab bingo ticket that displays images or text that could be interpreted as depicting alcoholic beverages, weapons, profane language, provocative, explicit or derogatory images or text. All images or text are subject to final approval by the Commission; and

(H) be accompanied with the color artwork of the pull-tab bingo tickets reverse side along with a list of all other colors that will be printed with the game.

(4) Upon approval of the color artwork, the manufacturer will be notified by the Commission to submit one deal, for testing. The deal must be submitted for testing to the Commission at the manufacturer's own expense. If necessary, the Commission may request that additional deals be submitted for testing.

(5) If the color artwork is approved and the pull-tab bingo deal(s) pass the Commission's testing, the manufacturer will be notified of the approval. This approval only extends to the specific pull-tab bingo game and the specific form number cited in the Commission's approval letter. If the pull-tab bingo ticket is modified in any way, with the exception of the serial number, it must be resubmitted to the Commission for approval.

(6) The Commission may require resubmission of an approved pull-tab bingo ticket at any time.

(7) If an approved pull-tab bingo game is discontinued or no longer manufactured for sale in Texas, the manufacturer of this game must provide the Commission written notification within ten days of this change. The notification must include the name of the pull-tab bingo game and the form number of the pull-tab bingo ticket. The written notification may be sent to the Commission via facsimile, e-mail, delivery services or postal delivery. Notification that a game has been discontinued does not preclude a manufacturer, distributor or authorized organization from continuing to sell any deals produced prior to the date the game was discontinued. A manufacturer may reactivate a discontinued game by submitting a request to the Commission with a statement that the artwork for the discontinued game has not changed and by submitting the appropriate number of deals for testing from the next print run from the reactivated game. If the manufacturer does want to reactivate a game and make changes to the artwork then the artwork must be resubmitted for approval.

(c) Disapproval of pull-tab bingo tickets.

(1) Upon inspection of a pull-tab bingo ticket by the Commission and if it is deemed not to properly preserve the integrity or security of the Commission including compliance with the art work requirements of this rule, the Commission may disapprove a pull-tab bingo ticket. All pull-tab bingo tickets that are disapproved by the Commission may not be displayed or sold in the state of Texas by licensed manufacturers. Disapproval of and prohibition to use, purchase, sell or otherwise distribute such a pull-tab bingo ticket is effective immediately upon notice to the manufacturer by the Commission.

(2) If modified by the manufacturer all disapproved pull-tab bingo tickets may be resubmitted to the Commission. At any time the manufacturer may withdraw any disapproved pull-tab bingo tickets from further consideration.

(3) The Commission may disapprove a pull-tab bingo game at any stage of review, which includes artwork review and security testing, or at any time in the duration of a pull-tab bingo game. The disapproval of a pull-tab bingo ticket is administratively final.

(d) Manufacturing requirements.

(1) Manufacturers of pull-tab bingo tickets must manufacture, assemble, and package each deal in such a manner that none of the winning pull-tab bingo tickets, nor the location, or approximate location of any winning pull-tab bingo ticket can be determined in advance of opening the deal by any means or device. Nor should the winning pull-tab bingo tickets, or the location or approximate location of any winning pull-tab bingo ticket be determined in advance of opening the deal by manufacture, printing, color variations, assembly, packaging markings, or by use of a light. Each manufacturer is subject to inspection by the Commission, its authorized representative, or designee.

(2) All winning pull-tab bingo tickets as identified on the payout schedule must be randomly distributed and mixed among all other pull-tab bingo tickets of the same serial number in a deal regardless of the number of packages, boxes, or other containers in which the deal is packaged. The position of any winning pull-tab bingo ticket of the same serial numbers must not demonstrate a pattern within the deal or within a portion of the deal.

(3) Each deal of pull-tab bingo tickets must contain a packing slip inside the deal. This packing slip must substantiate the name of the manufacturer, the serial number for the specific deal, the date the deal was packaged, and the name or other identification of the person who packaged the deal.

(4) Each deal's package, box, or other container shall be sealed at the manufacturer's factory with a seal including a warning to the purchaser that the deal may have been tampered with if the package, box, or other container was received by the purchaser with the seal broken.

(5) Each deal's serial number shall be clearly and legibly placed on the outside of the deal's package, box or other container or be able to be viewed from the outside of the package, box or container.

(6) The flare for the deal shall be located on the outside of each deal's sealed package, box, or other container.

(7) Manufacturers must seal or tape, with tamper resistant seal or tape, every entry point into a package, box or container of pull-tab bingo tickets prior to shipment. The seal or tape must be of such construction as to guarantee that should the container be opened or tampered with, such tampering or opening would be easily discernible.

(8) All high tier winning instant pull-tab bingo tickets must utilize a secondary form of winner verification.

(9) Each individual pull-tab bingo ticket must be constructed so that, until opened by a player, it is substantially impossible, in the opinion of the Commission, to determine its concealed letter(s), number(s) or symbol(s).

(10) No manufacturer may sell or otherwise provide to a distributor and no distributor may sell or otherwise provide to a licensed authorized organization of this state or for use in this state any pull-tab bingo game that does not contain a minimum prize payout of 65% of total receipts if completely sold out.

(11) A manufacturer in selling or providing pull-tab bingo tickets to a distributor shall seal or shrink-wrap each deal completely in a clear wrapping material.

(12) Pull-tab bingo tickets must:

(A) be constructed of cardboard and glued or otherwise securely sealed along all four edges of the pull-tab bingo ticket and between the individual perforated break-open tab(s) on the ticket. The glue must be of sufficient strength and type so as to prevent the separation of the face from the reverse sides of a pull-tab bingo ticket;

(B) have letters, numbers or symbols that are concealed behind perforated window tab(s), and allow such letters, numbers or symbols to be revealed only after the player has physically removed the perforated window tab(s);

(C) prevent the determination of a winning or losing pull-tab bingo ticket by any means other than the physical removal of the perforated window tab(s) by the player; and

(D) have the Commission's seal placed on all pull-tab bingo tickets by only a licensed manufacturer.

(13) Wheels must be submitted to the Commission for approval. As a part of the approval process, the following requirements must be demonstrated to the satisfaction of the Commission:

(A) wheels must be able to spin at least four times with reasonable effort;

(B) wheels must only contain the same number or symbols as represented on the event ticket; and

(C) locking mechanisms must be installed on wheel(s) to prevent play outside the licensed authorized organization's licensed time(s).

(e) Sales and redemption.

(1) All winning pull-tab bingo tickets must be presented for payment during the licensed authorized organization's licensed times at which the pull-tab bingo ticket is purchased. Immediately upon payment a licensed authorized organization must punch a hole with a standard hole punch through or otherwise mark or deface each winning pull-tab bingo ticket of \$5.00 or more.

(2) A licensed authorized organization may sell or redeem winning pull-tab bingo tickets on the premises specified in its bingo license only:

(A) during the licensed authorized organization's licensed times; or

(B) during a required intermission between the bingo occasions of two licensed authorized organizations.

(3) Licensed authorized organizations may not display or sell any pull-tab bingo ticket which has in any manner been marked, defaced, tampered with, or which otherwise may deceive the public or affect a person's chances of winning.

(4) A licensed authorized organization may not withdraw a deal of pull-tab bingo tickets from play until the entire deal is completely sold out or all winning pull-tab bingo tickets of \$5.00 prize winnings or more have been either cashed, or redeemed, or the bingo occasion ends.

(5) A licensed authorized organization may not commingle different serial numbers of the same form number of pull-tab bingo tickets.

(6) A licensed authorized organization may bundle pull-tab bingo tickets of different form numbers and may sell these bundled pull-tab bingo tickets during their licensed times.

(7) The licensed authorized organization's gross receipts from the sale of pull-tab bingo tickets must be included in the reported total gross receipts for the organization. Each deal of pull-tab bingo tickets must be accounted for in sales, prizes or unsold cards.

(f) Inspection. The Commission, its authorized representative or designee may examine and inspect any individual pull-tab bingo ticket or deal of pull-tab bingo tickets and may pull all remaining pull-tab bingo tickets in an unsold deal.

(g) Records.

(1) Any licensed authorized organization selling pull-tab bingo tickets must maintain a purchase log showing:

(A) the date of the purchase, the form number and corresponding serial number of the purchased pull-tab bingo tickets; and

(B) the name, address, and taxpayer number of the distributor from whom the pull-tab bingo tickets were purchased.

(2) Licensed authorized organizations must show the sale of pull-tab bingo tickets, prizes that were paid and the serial number of the pull-tab bingo tickets on the daily cash report. The aggregate total sales for the licensed authorized organization must be recorded on the cash register.

(3) Licensed authorized organizations must maintain a perpetual inventory of all pull-tab bingo games. They must account for all sold and unsold pull-tab bingo tickets and pull-tab bingo tickets designated for destruction. The licensed authorized organization will be responsible for the gross receipts, prizes and prize fee associated with the unaccounted for pull-tab bingo tickets.

(4) As long as a specific pull-tab bingo game serial number is in play, all records, reports, receipts and redeemed winning pull-tab

bingo tickets of \$5.00 or more relating to this specific pull-tab bingo game serial number must be retained on the licensed premises for examination by the Commission.

(5) If a deal is removed from play and marked for destruction then all redeemed winning and unsold pull-tab bingo tickets of the deal must be retained by the licensed authorized organization for a period of four years from the date the deal is taken out of play or until the destruction of the deal is witnessed by the Commission, its authorized representative or designee.

(6) Manufacturers and distributors must provide the following information on each invoice and other document used in connection with a sale of pull-tab bingo tickets:

(A) date of sale;

(B) quantity sold;

(C) cost per each deal of pull-tab bingo game sold;

(D) serial number of each pull-tab bingo game's deal;

(E) name and address of the purchaser; and

(F) Texas taxpayer number of the purchaser.

(7) All licensed organizations must retain these records for a period of four years.

(h) Style of Play. The following pull-tab bingo tickets are authorized by this rule. A last sale feature can be utilized on any pull-tab bingo ticket.

(1) Sign-up Board. A form of pull-tab bingo that is played with a sign-up board. Sign-up board tickets that contain a winning numeric, alpha or symbol instantly win the stated prize or qualify to advance to the sign-up board. The sign-up board that serves as the game flare is where identified winning sign-up board ticket holders may register for the opportunity to win the prize indicated on the sign-up board.

(2) Sign-up Board Ticket. A sign up board ticket is a form of pull-tab bingo played with a sign-up board. A single window or multiple windows sign-up board ticket reveals a winning (or losing) numeric, alpha or symbol that corresponds with the sign-up board.

(3) Tip Board. A form of pull-tab game where perforated tickets attached to a placard that have a predetermined winner under a seal.

(4) Coin Board. A placard that contains prizes consisting of coin(s). Coin boards can have a sign-up board as part of its placard.

(5) Coin Board Ticket. A form of pull-tab bingo that when opened reveals a winning number or symbol that corresponds with the coin board.

(6) Event Ticket. Pull-tab bingo tickets used as event tickets must contain more than two instant winners. Event ticket winner(s) are determined by some subsequent action such as a drawing of ball(s), spinning wheel, opening of a seal on a flare(s) or any other method approved by the Commission so long as that method has designated numbers, letters, or symbols that conform to the randomly selected numbers or symbols.

(7) Instant Ticket. A form of pull-tab bingo that have predetermined winners and losers and have immediate recognition of the winners and losers.

(8) Multiple Part Event or Multiple Part Instant Ticket. An event ticket that is broken apart and sold in sections by a licensed authorized organization. Each section of the ticket consists of a separate

deal with its own corresponding payout structure, serial number, and winner verification.

§402.301. Bingo Card/Paper.

(a) Definitions. The following words and terms, shall have the following meanings unless the context clearly indicates otherwise:

(1) Bingo card/paper. A hard card, disposable bingo card/paper, shutter card, or any other bingo card/paper approved by the Commission.

(2) Bingo hard card. A device made of cardboard, plastic or other suitable material that is intended for repeated use of the bingo card at multiple bingo occasions.

(3) Bonus number(s). A type of bingo card/paper that has an identified number or numbers which when called could result in an additional prize awarded.

(4) Braille bingo card. A device that contains raised symbols that reflect numbers on a reusable card.

(5) Break-open bingo. A type of disposable bingo card/paper that is sealed, that conceals the bingo card/paper face, that may be folded, and where the bingo game or a portion of the bingo game has been pre-called.

(6) Case. A receptacle that contains bingo card/paper products.

(7) Cut. Indicates the direction in which a sheet of faces will be cut from the master sheet of disposable bingo card/paper. A cut can be square, horizontal or vertical. The sheet of disposable bingo card/paper printed by the manufacturer of a specific group of disposable bingo card/paper that can be subdivided vertically or horizontally into sheets.

(8) Defective. Bingo card/paper missing specifications as originally approved by the Commission.

(9) Disposable bingo card/paper. A sheet or sheets of paper that is designed or intended for use at a single bingo occasion.

(10) Double numbers. Bingo card/paper with two numbers in each of the 24 spaces on each face.

(11) Face. A specific configuration of numbers, symbols, or blank squares imprinted on paper, cardboard, or other materials, and designed to be used to conduct bingo games. The bingo card/paper normally consists of five rows of five columns that may bear 24 pre-printed numbers between 1 and 75, symbols, or blank squares, except for the center square which is a free space and have the letters B-I-N-G-O appear in order above the five columns, with the exception of bonus number(s) that may appear on the bingo card/paper.

(12) Free space. The center square on the face of a bingo card/paper.

(13) Loteria. A type of bingo that utilizes symbols or pictures. Normally playing cards are utilized instead of numbered balls.

(14) Multi-part card/paper. A type of disposable bingo card/paper where the player selects the numbers. The player retains one part of the disposable bingo card/paper while the licensee for the purpose of verification retains the other part of the disposable bingo card/paper.

(15) On. The number of faces imprinted on a sheet of disposal bingo card/paper after it is cut. The number of bingo card/paper faces normally precedes this term.

(16) Pre-marked. A bingo card/paper where one or more of the numbers are already marked or identified prior to the start of the game.

(17) Product line. A specific type of bingo card/paper, identifiable by features or characteristics that are unique when compared to other bingo card/paper manufactured by the manufacturer.

(18) Serial number. The unique identification number assigned by the manufacturer to a specific product line of bingo card/paper.

(19) Series number. The specific number assigned by the manufacturer that identifies the unique configuration of numbers that appears on an individual bingo card/paper face.

(20) Sheet. A single piece of paper that contains one or more disposable bingo card/paper faces.

(21) Shutter card. A device made of cardboard or other suitable material with plastic "shutters" that cover a number to simulate the number being daubed.

(22) UP. The number of sheets of disposable bingo paper glued together by the manufacturer. The number of sheets normally precedes this term.

(23) UPS pads. A bound collection of disposable bingo card/paper where each sheet in the collection is used to play a separate bingo game during the occasion.

(b) Approval of bingo card/paper.

(1) Bingo card/paper shall not be sold in the state of Texas, nor furnished to any person in this state, nor used for play in this state until the manufacturer of the bingo card/paper has received written approval for use within the state of Texas by the Commission. The manufacturer at its own expense must present the bingo card/paper to the Commission for approval.

(2) A letter of introduction including the style of play must be presented to Commission headquarters for review. The manufacturer must submit one complete color positive or sample for each type of bingo card/paper. The color positive or sample may be submitted in an electronic format prescribed by the Commission in lieu of the hard-copy submission. The color positive or sample bingo card/paper must:

(A) bear on the face of every disposable bingo card/paper used, sold, or furnished in this state an impression of the State of Texas and a star of five points encircled by olive and live oak branches and the words "Texas Lottery Commission," in accordance with detailed specification, available on request from the Commission. The face of each disposable bingo card/paper must also have printed on it in a conspicuous location the name of the manufacturer or trademark, which has been filed with the Commission; and

(B) contain the serial and series numbers assigned by the manufacturer on the face of each of the bingo card/paper, except in the case of Break-open bingo, which may contain the serial number assigned by the manufacturer on the outside so as not to be concealed.

(3) The bingo card/paper may contain numbers or symbols so long as the numbers or symbols preserve the integrity of the Commission. The Commission will not approve any bingo paper that displays images or text that could be interpreted as depicting alcoholic beverages, violent acts, weapons, profane language, provocative, explicit or derogatory images or text. All images or text are subject to final approval by the Commission.

(4) If the bingo card/paper is approved the manufacturer will be notified of the approval. This approval only extends to the specific bingo card/paper submitted and will be cited in the Commission's approval letter. If the bingo card/paper is modified in any way, with the exception of the color, series number, and/or serial number it must be resubmitted to the Commission for approval.

(5) The Commission may require resubmission of an approved bingo card/paper at any time.

(6) If an approved bingo card/paper is discontinued or no longer manufactured for sale in Texas, the manufacturer must provide the Commission written notification within ten days of discontinuance or cessation of manufacturing for sale in Texas. The written notification may be sent to the Commission via facsimile, e-mail, delivery services or postal delivery.

(c) Disapproval of bingo card/paper.

(1) After inspection of the bingo card/paper by the Commission, if the bingo card/paper does not comply with the provisions of this rule and/or the Bingo Enabling Act, the Commission shall disapprove the bingo card/paper and shall notify the manufacturer of the disapproval. Any bingo card/paper that is disapproved by the Commission may not be displayed, purchased or sold in the state of Texas. Disapproval of and prohibition to use, purchase, sell or otherwise distribute, is effective immediately upon notice to the manufacturer by the Commission.

(2) A manufacturer shall not sell, or furnish unapproved bingo card/paper to anyone, including another manufacturer or distributor for use in this state. A manufacturer shall not sell, or furnish bingo card/paper not bearing the seal of the Commission on the face of the bingo card/paper and the manufacturer's name or trademark to distributors for use in this state. This requirement also applies to any manufacturer who assembles bingo card/paper for sale in Texas.

(3) A licensed authorized organization shall not purchase, obtain, or use disapproved bingo card/paper in this state.

(4) If the manufacturer modifies the bingo card/paper that was previously disapproved, the manufacturer may resubmit the modified bingo card/paper for Commission approval. At any time the manufacturer may withdraw any disapproved bingo card/paper from further consideration.

(5) The Commission may disapprove the bingo card/paper at any stage of review. The disapproval of the bingo card/paper is administratively final.

(d) Manufacturing requirements.

(1) Bingo card/paper must comply with the following construction standards.

(A) The disposable paper used shall be of sufficient weight and quality to allow for clearly readable numbers and to prevent ink from spreading or bleeding through an UPS pad thereby obscuring other numbers or bingo card/paper;

(B) series numbers may be displayed in the center square of the bingo card/paper;

(C) numbers printed on the bingo card/paper shall be randomly assigned; and

(D) a manufacturer shall not repeat a serial number on or in the same product line, series, and color of bingo card/paper within one year of the last printing of that serial number.

(2) UPS pad must comply with the following construction standards.

(A) Bingo card/paper in UPS pads must only be glued and not stapled; and

(B) the disposable bingo card/paper assembled into UPS pads shall not be separated, with the exception of the multi-part disposable bingo card/paper, nor shall single sheets already manufactured be cut for sale for special bingo games.

(3) Inspection. The Commission, its authorized representative or designee may examine and inspect any individual bingo card/paper or series of bingo card/paper and may pull all remaining bingo card/paper in the inventory if the Commission, its authorized representative or designee determines that the bingo card/paper is defective or has not been approved.

(4) Packaging.

(A) Bingo card/paper shall be sealed in shrink wrap and be designed so that if the shrink wrapped bingo card/paper, package, or case was opened or tampered with, it would be easily noticed.

(B) Barcodes may be included on each bingo card/paper, package, or case provided the barcode contains information required in subparagraph (C).

(C) A label shall be placed on, or be visible from, the exterior of each package or case of bingo card/paper listing the following information:

(i) Type of product;

(ii) Series number of the UPS pads and/or sheet(s);

(iii) Serial numbers of the top sheet of the UPS pads and/or sheet(s);

(iv) Number of package or cases; and

(v) Cut and color of paper.

(D) A packing slip shall be included with the package or case listing the following information:

(i) Type of product;

(ii) Number of UPS pads or sheets;

(iii) Series number of the UPS pads and/or sheet(s);

(iv) Serial numbers of the top sheet of the UPS pads and/or sheet(s);

(v) Number of package or cases; and

(vi) Cut and color of paper.

(e) Records.

(1) Manufacturers and distributors must provide the following information on each invoice and other documents used in connection with a sale, return or any other type of transfer of bingo card/paper:

(A) Date of sale;

(B) Quantity sold and number of faces per sheet;

(C) Serial and series number of each bingo card/paper sold;

(D) Name and address of the purchaser; and

(E) Texas taxpayer identification number of the purchaser.

(2) Manufacturers and distributors must maintain standard accounting records that include but are not limited to:

- (A) Sales invoice;
- (B) Credit memos;
- (C) Sales journal; and
- (D) Purchase records.

(3) Licensed authorized organization.

(A) A licensed authorized organization must maintain a disposable bingo card/paper sales summary showing the organization's name, taxpayer number, distributor's taxpayer number, invoice date, distributor's name, invoice number, serial number, and series number. Also, the disposable bingo card/paper sales summary must include the number of faces (ON), number of sheets (UP), and color of borders.

(B) A licensed authorized organization must show the date of the occasion on which the disposable bingo card/paper was sold, a beginning inventory, along with the number of disposable bingo card/paper sold.

(C) A licensed authorized organization must maintain a perpetual inventory of all disposable bingo card/paper.

(D) Disposable bingo card/paper marked for destruction cannot be destroyed until witnessed by the Commission, its authorized representative or designee. All destruction documentation must be retained by the licensed organization for a period of four years from the date of destruction.

(4) All records identified in this subsection must be retained for a period of four years from creation of the records.

(f) Braille cards. Visually impaired, legally blind, or persons with disabilities may use their own personal Braille cards when the authorized organization does not provide Braille Cards. Players using Braille cards shall pay the equivalent price to participate in the game. The authorized organization shall have the right to inspect, and to reject any personal Braille card(s). Braille cards are not required to be approved by the Commission. Braille cards are not considered bingo equipment as defined by Occupations Code, §2001.002(5).

(g) Loteria. The symbols or pictures may be identified with Spanish subtitles and each of the 54 cards contains a separate and distinct symbol or picture. The 54 individual cards may be shuffled by the caller and then randomly drawn and announced to the players. The player uses a loteria card, which contains a minimum of sixteen squares and each square has one of the 54 symbols or pictures. There are no duplicate symbols or pictures on the loteria card. Loteria cards are not considered bingo equipment as defined by Occupations Code, §2001.002(5).

(h) Style of play and minimum standards of play. Prizes awarded on any style of play must be in accordance with Occupations Code, §2001.420.

(1) Player pick ems. A game of bingo where a player selects his/her own numbers on a multi-part duplicated disposable bingo card/paper. One copy is retained by the player and used as a bingo card/paper while the other copy is provided to the organization for verification purposes.

(2) Progressive bingo. A game of bingo that either the established prize amount or number of bingo balls and/or objects may be increased from one session to the next scheduled session. If no player completes the required pattern within the specified number of bingo balls or objects drawn, the established prize amount may be increased but shall not exceed the prize amount authorized by the Bingo Enabling Act.

(3) Warm-up or early bird. A bingo game conducted at the beginning of a bingo occasion during the authorized organization's license times, in which prizes are awarded based upon a percentage of the sum of money received from the sale of the warm-up/early bird bingo card/paper.

(4) Shaded/Images bingo. Bingo card/paper that incorporates images where one or more squares on a bingo card/paper face are shaded. Each shaded image conforms to a pattern that must be achieved to win a bingo game or each shaded square may be used as a free space or a pattern for a bingo game.

(5) Bingo bonus number(s). A bingo game that has additional identified number(s) in excess of the 24 numbers that appear on the bingo card/paper face that, when called, could result in an additional prize awarded. The first player who matches the numbers shown on the bonus number(s) line within the specified number(s) called wins the additional prize.

(6) Multi level or multi tier. Bingo card/paper that has one or more additional lines of number(s) aside from the normal five lines that when played could result in an additional prize. Therefore, a multi level or multi tiered game could be played on this bingo card/paper that provides more opportunities to win.

(7) Multi color bingo. A bingo game played on a bingo card/paper with a different color for each bingo card/paper face. Prizes are awarded based on the color on which the bingo card/paper face that had the bingo.

(8) Pre-called. A game of bingo where the numbers for the game have been pre-called and identified prior to the start of the game.

(9) Double number. A bingo game played on a bingo card/paper that has two numbers per square. A player has two chances to daub each square.

(10) Break-open bingo. A type of bingo game played on sealed disposable bingo card/paper, where the bingo card/paper face is concealed, that may be folded, and where the bingo game has been pre-called. The bingo game may not be pre-called prior to the authorized organization's license time.

(11) Regular bingo. A bingo game played on the standard card face of five rows by five columns with 24 pre-printed numbers between 1 and 75, symbols, or blank squares and a free space square where the winner is determined by a predetermined pattern.

(i) Promotional bingo. This rule shall not apply to bingo card/paper furnished for use in a promotional bingo game conducted in accordance with the Occupations Code, §2001.551. The card/paper may not contain the Commission seal.

(j) Exempt organization. This rule shall not apply to bingo card/paper furnished for use by an organization receiving an exemption from bingo licensing in accordance with the Occupations Code, §§2001.551(b)(3)(A) and (B). The bingo card/paper may not contain the Commission seal.

(k) House rules. A licensed authorized organization playing a style of bingo other than regular bingo must develop house rules on how the game is played. The house rules must be made available to the public.

(l) Card-minding devices. This rule shall be applicable only to bingo card/paper made of paper, cardboard or similar material approved by the Commission and shall not be applicable to the manufacture or use of card-minding devices addressed in §402.302, with the exception of style of play as defined by this rule and approved by the Commission.

§402.302. Card-Minding Systems.

(a) Definitions. The following words and terms shall have the following meanings unless the context clearly indicates otherwise:

(1) Account Number. The unique identification number, if any, assigned by a card-minding system to a customer that uses a fixed-base card-minding device to play bingo.

(2) Card-minding system. Any electronic or computerized device and related hardware and software that is interfaced with or connected to equipment used to conduct a game of bingo as defined in Occupations Code, §2001.002. A card-minding system consists of the following two parts:

(A) Card-minding device. An electronic or mechanical device, either portable or fixed-base, that is used by a bingo player to mark representations of bingo card faces stored in the device. A portable card-minding device refers to a hand-held, custom-built or customized, single purpose device designed to be used by a player to play bingo. A fixed-base card-minding device refers to a stationary computer on which a manufacturer's proprietary software is used by a player to play bingo. A card-minding device may be designed to be played in conjunction with paper.

(B) Site system. Computer hardware, software, and peripheral equipment, that is located at the bingo premises, is controlled by the licensed authorized organization, and interfaces with, connects with, controls or defines the operational parameters of card-minding devices and must include, but is not limited to, the following components: point of sale station, a caller station verifier, required printers, dial-up modem, proprietary executable software, report generation software and an accounting system and database. All references to and requirements of site systems and card-minding systems throughout this rule shall be applicable to manufacturers of card-minding devices designed to be played with paper, but the function or action required by the rule may be performed in a manner other than electronically.

(3) Checksum or Digital Signature. Methods by which data, as in a software application, is expressed in a calculated number which is used to verify the accuracy of the data or a copy of the data.

(4) Model number. A number designated by the manufacturer that indicates the unique structural design of a portable card-minding device or card-minding system.

(5) Peripheral games. Peripheral games are games that are not prohibited by law, including Occupations Code, §2001.416 and/or do not allow the accumulation or awarding of credits that can be exchanged for anything of value.

(6) Player tracking software. Computer software, located on the card-minding system, that is used to track characteristics of bingo players, including personal data and purchasing habits of players at a bingo hall.

(7) Proprietary software. Custom computer software developed by the manufacturer that is a primary component of the card-minding system and is required for a card-minding device to be used in a game of bingo.

(8) Secondary component. Additional software or hardware components, provided by the manufacturer, that are part of or are connected to a card-minding system that does not affect the conduct of the game of bingo. Secondary components may include computer screen backgrounds, battery charge up software routines, printers, printer software drivers, and charging racks.

(9) Serial number. The unique identification number assigned by a manufacturer to a specific portable card-minding device or other component of a card-minding system.

(10) Software modifications. Alterations to the proprietary software that affects the requirements or restrictions as identified in this rule or the Bingo Enabling Act while not making substantial changes that affect the previously approved device's proprietary software or hardware platforms.

(11) Terminal number. The unique identification number, if any, assigned by a manufacturer to a specific fixed-base card-minding device.

(12) Version number. A unique number designated by the manufacturer to signify a specific version of software used on or by the card-minding system.

(b) Approval of Card-Minding System Components.

(1) Proprietary software may not be sold, leased, or otherwise furnished, including demonstrated except as provided by subsection (i)(5) of this section, to any person in this state, for use in the conduct of bingo until a card-minding system containing the identical software has first been presented to the Commission by its manufacturer, at the manufacturer's expense, and has been approved by the Commission for use within the state.

(2) A portable card-minding device may not be sold, leased, or otherwise furnished, including demonstrated except as provided by subsection (i)(5) of this section, to any person in this state, for use in the conduct of bingo until a portable card-minding device which is identical to the card-minding device intended to be sold, leased, or otherwise furnished has first been presented to the Commission by its manufacturer, at the manufacturer's expense, and has been approved by the Commission for use within the state.

(3) Secondary components, including hardware components of fixed-base card-minding devices and non-proprietary software, may not be sold, leased, or otherwise furnished, including demonstrated except as provided by subsection (i)(5) of this section, to any person in this state, for use in the conduct of bingo unless approved by the Commission for use within the state. However, manufacturers may conduct routine maintenance activities and replace secondary components of a card-minding system without prior Commission approval as long as this activity does not affect the operation of any proprietary software or the manner in which a bingo game is played.

(4) The Commission shall determine whether all proprietary software and portable card-minding devices required to be tested, as well as other components of card-minding systems, conform with the requirements and restrictions contained in the Bingo Enabling Act and the Charitable Bingo Administrative Rules. The decision by the Commission to approve or disapprove any component of a card-minding system is administratively final.

(5) A card-minding system may not allow the play or simulate the play of video poker, keno, blackjack or similar games.

(6) Manufacturers may provide any reports and test results conducted or prepared by an independent, third-party testing laboratory with any submission of a card-minding system or modification to a card-minding system to the Commission. The Commission may consider the information contained in these reports during the approval process.

(7) A checksum number or digital signature will be obtained from the proprietary software submitted for testing to be used to verify proprietary software compliance at playing locations.

(c) Submission of Card-Minding System Components.

(1) A portable card-minding device that is identical to the portable card-minding device intended to be sold, leased, or otherwise

furnished must be presented to the Commission in Austin, Texas for review and testing by the Commission, if the Commission determines testing is required. A copy of proprietary software that is identical to the proprietary software intended to be sold, leased, or otherwise furnished must be presented to the Commission in Austin, Texas for review and testing by the Commission, if the Commission determines testing is required.

(A) Submissions must include all associated hardware, software, written operating manuals and technical information, to the extent not already in the Commission's possession, in order to allow the Commission to determine whether the components submitted and the card-minding system that will contain the components complies with the Bingo Enabling Act and the Charitable Bingo Administrative Rules.

(B) Once the manufacturer represents that the card-minding system is ready for testing, no modifications will be allowed to the card-minding system while the testing is in progress. The Commission shall either approve or disapprove the submitted card-minding system or component in writing within 45 days unless the Commission finds that there is good cause to extend this period for another 45 days.

(C) The manufacturer will be assessed a fee in an amount that is at least sufficient to cover the costs incurred by the Charitable Bingo Operations Division for testing each original submission, resubmission of a disapproved card-minding system or component, and submission of modifications to a previously approved card-minding system. Failure to pay this fee may result in administrative action being taken against the manufacturer.

(i) An original submission shall include, but is not limited to, an entirely new card-minding system, an entirely new component of a card-minding system, including changes to the proprietary software, the point of sale, database, server and card-minding devices that create a version number change.

(ii) Software modifications that require testing and a subsequent fee are alterations to the proprietary software that affects the requirements or restrictions as identified in this rule or the Bingo Enabling Act while not making substantial changes to previously approved proprietary software or hardware platforms.

(iii) Changes of or to a secondary component, including but not limited to printers, monitors, or batteries, that do not affect the play of the game or the databases and do not affect the requirements or restrictions as identified in this rule are not considered modifications that require testing, but they do require approval by the Commission prior to use. The Commission retains the right to determine if a change of this type is subject to testing.

(2) The Commission must be informed via a written communication of all secondary components of a card-minding system that a manufacturer intends to be sold, leased, or otherwise furnished for use in the conduct of bingo prior to such use.

(3) If granted, approval extends only to the specific card-minding system or component approved. Any modification must be approved by the Commission. Any addition of software applications or modifications by anyone other than a licensed manufacturer or its designated representative to an approved electronic card-minding system is prohibited.

(4) Once a card-minding system or component has been approved, the Commission may keep the card-minding system or component for further testing and evaluation for as long as the Commission deems necessary. The manufacturer shall make provisions to retrieve

the card-minding system or component if requested by the Commission, at the manufacturer's expense. Failure to do so will result in the manufacturer relinquishing its rights to the system or component and the Commission shall dispose of the system or component as it deems appropriate.

(d) Manufacturing Requirements.

(1) A manufacturer of a card-minding device must manufacture each associated site system to include a point of sale station and an internal accounting system that is capable of recording the licensed authorized organization's sale of card-minding devices, disposable bingo cards, and pull-tabs.

(2) A manufacturer of a card-minding device must ensure that the associated site system has dial-up capability, so that the Commission may remotely verify the operation, compliance and internal accounting systems of the site system at any time. The manufacturer shall provide to the Commission all current protocols, passwords, and any other required information needed to access the system. Any and all reports maintained or generated by the card minding system shall be capable of being downloaded or otherwise accessed via the modem.

(3) A manufacturer of a card-minding device must manufacture each associated site system to ensure that an internal accounting system records and retains for a period of not less than 12 months:

(A) the serial number of each bingo card sold for card-minding device use;

(B) the price of each card or card package sold;

(C) the total amount of the card-minding device sales for each occasion;

(D) the total number of card faces sold for use with card-minding devices for each occasion;

(E) the serial number of each portable electronic card-minding device sold; and

(F) the terminal number or account number associated with each fixed-base card-minding device sold.

(4) The information referenced in paragraph (3) of this subsection must be secure and shall not be accessible for alteration during the occasion. The site system must also have report generation software with the capability to print, for a period of 12 months, all information required to be maintained on the site system's active or archived databases.

(5) A manufacturer of a card-minding device must manufacture each associated site system to ensure that the applicable point of sale station is capable of printing a receipt for each sale or void of an electronic or paper card face product that includes, at a minimum, the following information:

(A) the date and time of the transaction;

(B) the dollar value of the transaction and quantity of associated products;

(C) the sequential transaction number; and

(D) the session in which the product was sold.

(6) A manufacturer of a card-minding device must manufacture each associated site system to ensure that the applicable point of sale station is capable of printing a receipt for each sale or void of an electronic product that includes, at a minimum, the following information in addition to the information in paragraph (5) of this subsection:

(A) each card face serial number or range of serial numbers;

(B) the serial number of each portable card-minding device sold; and

(C) the terminal number or account number for each fixed-base card-minding device sold.

(7) A card-minding system may include player tracking software. Records generated by the use of the player tracking software are subject to review by the Commission. The records should be available either at the card-minding system location or retrievable via dial up modem. The records must be maintained for a period of not less than 12 months. Player tracking records shall at all times be the property of the licensed authorized organization and neither the manufacturer nor the distributor shall utilize or make available to any person, other than the Commission or as otherwise authorized by law, the information contained within the player tracking software without the express written permission of the licensed authorized organization.

(8) A manufacturer of a card-minding device must manufacture each associated site system to include a caller station verifier that is able to verify winning cards and to print the cards for posting. The caller station verifier must be capable of posting all balls called for verification purposes and print an ordered list of the called balls.

(9) A manufacturer of a card-minding device shall employ sufficient security safeguards in designing and manufacturing the card-minding system such that it may be verified that all proprietary software components are authentic copies of the approved software components and all functioning components of the card-minding system are operating with identical copies of approved software programs. The device must also have sufficient security safeguards so that any restrictions or requirements authorized by the Commission or any approved proprietary software are protected from alteration by unauthorized personnel. Examples of security measures that may be employed to comply with these provisions are the use of dongles, digital signature comparison hardware and software, secure boot loaders, encryption, and key and callback password systems.

(10) A manufacturer of a card-minding device shall ensure that the card-minding system does not allow a card-minding device to be used to obtain a bingo prize for any bingo game other than for a game within the bingo occasion for which the card-minding device was sold.

(11) A manufacturer of a card-minding system shall ensure that a card-minding device does not allow any bingo games or card faces other than those purchased by the patron to be available for play.

(12) A manufacturer of a card-minding device shall ensure that a card-minding device is not capable of playing in excess of sixty-six card faces per game.

(13) The toll-free "800" number operated by the Problem Gamblers' Help Line of the Texas Council on Problem and Compulsive Gambling must be displayed on each card-minding device in such a manner that it is conspicuous and clearly visible to a player using the card-minding device or displayed on the screen of the card-minding device in such a manner that it is conspicuous and clearly visible to a player using the card-minding device at all times and printed on the receipt issued to the player using the card-minding device. If labels are placed on the card-minding device, the manufacturer must furnish labels to the distributor. The licensed authorized organization is responsible for the placement of labels on each device.

(e) Distributor Requirements.

(1) Before initial use by a licensed authorized organization, each distributor that leases, sells or otherwise furnishes a card-minding

system must notify the Commission in writing on a form prescribed by the Commission or electronically in a format prescribed by the Commission that includes the following information:

(A) the modem number and total number of card-minding devices installed at the bingo premises;

(B) the name of the bingo premises, physical address, telephone number, and licensed commercial lessor's taxpayer identification number, where the card-minding system is located;

(C) the date the card-minding system was installed;

(D) the model, version and serial numbers or terminal numbers of the card-minding devices and site system equipment;

(E) the name, and taxpayer identification number of the licensed authorized organization to whom the card-minding system was sold, leased, or otherwise furnished; and

(F) the name, and taxpayer identification number of the manufacturer or distributor from whom the card-minding system was leased, purchased or otherwise obtained.

(2) Each distributor that leases, sells or otherwise furnishes a card-minding system must notify the Commission in writing on a form prescribed by the Commission or electronically in a format prescribed by the Commission of the make, model and serial or terminal number of each card-minding device that will be utilized at multiple locations. Additionally, if a card-minding device is to be used at more than one bingo premises the following must occur:

(A) each location must have its own separate site system;

(B) the distributor must list all card-minding devices at each bingo premises and must include a separate report indicating at what time and at what playing location the units will be located.

(3) Each distributor that leases, sells or otherwise furnishes a card-minding system must notify the Commission in writing on a form prescribed by the Commission or electronically in a format prescribed by the Commission which will include the same information required in paragraph (1) of this subsection for each card-minding device that is removed or added from a bingo premises on a quarterly basis. Before the complete removal or hardware up-grade of any card-minding system, each licensed authorized distributor must supply a copy of the data files to each licensed authorized organization who utilized the card-minding system.

(4) Each distributor shall provide labels displaying the toll-free "800" number operated by the Problem Gamblers' Help Line of the Texas Council on Problem and Compulsive Gambling to each licensed authorized organization for placement on each card-minding device.

(f) Licensed Authorized Organization Requirements.

(1) Each licensed authorized organization shall be responsible for ensuring that the toll-free "800" number operated by the Problem Gamblers' Help Line of the Texas Council on Problem and Compulsive Gambling is prominently displayed on each card-minding device.

(2) The licensed authorized organization must ensure that the dial-up phone lines remain attached to the site systems at all times and are operational.

(g) Inspection. The Commission may examine and inspect any card-minding system, including any individual card-minding device and related site system. Such examination and inspection includes immediate access to the card-minding device and unlimited inspection of all parts of the card-minding system.

(h) Records.

(1) Each manufacturer selling, leasing or otherwise furnishing a card-minding device or system must maintain a single log or other record showing the following:

(A) the date the distributor obtained the card-minding device or system from the manufacturer;

(B) the model, version and serial number of each portable card-minding device;

(C) the account number or terminal number of each fixed-base card-minding device;

(D) the model and version number of all components of the site system software; and

(E) the distributor's name and taxpayer identification number to whom the card-minding system was sold, leased or otherwise furnished.

(2) A manufacturer selling, leasing, or otherwise providing card-minding devices or systems to a distributor must provide the distributor with an invoice or other documentation that contains, at a minimum, the following information and must maintain copies of the invoice or documentation for a period of four years:

(A) the date of sale or period covered by the invoice;

(B) number sold or leased; and

(C) total invoice amount.

(3) Each distributor selling, leasing, or otherwise furnishing card-minding systems must maintain a single log or other record showing the following information:

(A) the modem number and quantity of card-minding devices at each bingo premises;

(B) the name of the bingo premises, physical address, telephone number, and licensed commercial lessor's taxpayer identification number where the card-minding system is located;

(C) the date the card-minding system was installed or removed;

(D) the model, version and serial numbers or terminal numbers of the card-minding devices and site system equipment;

(E) the name and taxpayer identification number of the licensed authorized organization or distributor to whom the card-minding device or system was sold, leased or otherwise furnished; and

(F) the name, and taxpayer identification number of the manufacturer or distributor from whom the card-minding device or system was purchased, leased or otherwise obtained.

(4) A distributor selling, leasing, or otherwise providing card-minding systems to a licensed authorized organization or distributor must provide the licensed authorized organization or distributor with an invoice or other documentation that contains, at a minimum, the following information and must maintain copies of the invoice or documentation for a period of four years:

(A) the date of sale or period covered by the invoice;

(B) number sold or leased; and

(C) total invoice amount.

(5) Each licensed authorized organization purchasing, leasing, or otherwise utilizing a card-minding system must maintain a log or other records showing the following:

(A) the date the card-minding system was installed or removed; and

(B) the name, and taxpayer identification number of the distributor from which the card-minding system was purchased, leased or otherwise obtained.

(6) If multiple licensed authorized organizations hold an interest in a card-minding system, a single record identifying each licensed authorized organization must be retained on the premises where the card-minding system is utilized.

(7) All records, reports and receipts relating to the card-minding systems' sales, maintenance, and repairs must be retained by the licensed authorized organization on the premises where the licensed authorized organization is licensed to conduct bingo or at a location designated in writing by the licensed authorized organization for a period of four years for examination by the Commission. Written notice of any change in the designated playing location or modem number must be received by the Commission at least ten days prior to the change.

(8) Each licensed authorized organization that provides card-minding devices for bingo players' use shall maintain for four years reports for each occasion that provides the following information:

(A) the date and time of the session;

(B) the total number of card-minding devices sold;

(C) the serial number of each card-minding device sold;

(D) the total amount of sales of card-minding devices;

(E) the serial numbers of card faces used with each card-minding devices;

(F) the total sales amount of disposable card packages if any sold to be used with card-minding devices; and

(G) the total sales amount of disposable card packages sold.

(9) Each licensed authorized organization must record all bingo sales, including sales of card-minding devices and/or disposable cards, on a point of sale station.

(i) Restrictions.

(1) No manufacturer, distributor or licensed authorized organization may display, use or otherwise furnish a card-minding device which has in any manner been marked, defaced, tampered with, or which otherwise may deceive the player or affect a player's chances of winning.

(2) A card-minding device may be used by a bingo player only when operated in the following manner:

(A) The bingo player must perform at least the following functions:

(i) input each number or symbol called by the licensed authorized organization into the memory of the card-minding device by use of a separate and distinct action for each number or symbol called. Automatic marking of numbers or symbols is prohibited;

(ii) notify the licensed authorized organization when a winning pattern or "bingo" occurs by means that do not utilize the card-minding device or the associated system; and

(iii) identify the winning card face and display the card face to the licensed authorized organization.

(B) The bingo player must be physically present on the premises where the game is actually conducted during the game that is actually being conducted.

(3) If the Commission detects or discovers any problem with the card-minding system that affects the security and/or integrity of the bingo game or card-minding system, the Commission may direct the manufacturer, distributor, or licensed authorized organization to cease the sale, lease, or use of the card-minding system, as applicable and/or to remove the card-minding system from use or play until further notice by the Commission. The Commission may require the manufacturer to correct the problem or recall the card-minding system immediately upon notification by the Commission to the manufacturer. If the manufacturer, distributor, or licensed authorized organization detects or discovers any defect, malfunction, or problem with the card-minding system that affects the security and/or integrity of the bingo game or card-minding system, the manufacturer, distributor, or licensed authorized organization, as applicable, shall immediately remove the card-minding system from use or play and immediately notify the Commission of such action.

(4) A distributor and/or licensed authorized organization may not add or remove any software programs to an approved card-minding system without the permission of the manufacturer. If the Commission detects or discovers a card-minding system at a bingo premises that is using components or software that were required to have been approved by the Commission but have not been approved, the card-minding system is deemed to have an unauthorized modification.

(5) A manufacturer's demonstration of a non-approved card-minding system or any secondary component may take place only after permission is granted by the Commission. The Commission may request a manufacturer to voluntarily demonstrate a bingo product to the Commission staff that the manufacturer markets in another jurisdiction.

§402.303. Pull-tab or Instant Bingo Dispensers.

(a) Approval of Pull-tab or Instant Bingo Dispensers.

(1) No pull-tab or instant bingo dispenser may be sold, leased, or otherwise furnished to any person in this state or used in the conduct of bingo for public play unless and until a dispenser which is identical to the dispenser intended to be sold, leased, or otherwise furnished has first been presented to the Commission by its manufacturer, at the manufacturer's expense, and has been approved by the Commission for use within the state.

(2) An identical dispenser to the dispenser intended to be sold, leased, or otherwise furnished must be presented to the Commission in Austin, Texas for review. If granted, approval extends only to the specific dispenser model approved. Any modification must be approved by the Commission.

(3) Once a dispenser has been approved, the Commission may keep the dispenser for further testing and evaluation for as long as the Commission deems necessary.

(b) Manufacturing requirements.

(1) Manufacturers of pull-tab or instant bingo dispensers must manufacture each dispenser in such a manner to ensure that the dispenser dispenses a break-open bingo ticket, an instant bingo ticket, a pull-tab bingo game or instant bingo card only after the player inserts money into the dispenser, and that such ticket, game or card is the sole thing of value which may be redeemed for cash.

(2) Manufacturers of dispensers must manufacture each dispenser in such a manner to ensure that the device neither displays

nor has the capability to determine whether a break-open bingo ticket, an instant bingo ticket, or a pull-tab bingo game is a winning or non-winning ticket.

(3) Manufacturers of dispensers must manufacture each dispenser in such a manner that any visual animation does not simulate or display rolling or spinning reels.

(4) Manufacturers of dispensers must manufacture each dispenser in such a manner that any stacking column is adjustable for varying lengths of break-open bingo tickets, instant bingo tickets, or pull-tab bingo games. As an option, a dispenser may use replaceable stacking columns that accommodate varying lengths of break-open bingo tickets, instant bingo tickets, or pull-tab bingo games. The dispenser must be adjustable for varying thicknesses of break-open tickets, instant bingo tickets, or pull-tab bingo games.

(5) If the Commission detects or discovers any problem with the dispenser that affects the security and/or integrity of the break-open bingo ticket, an instant bingo ticket, or a pull-tab bingo game or dispenser, the Commission may direct the manufacturer, distributor, or conductor to cease the sale, lease, or use of the dispenser, as applicable. The Commission may require the manufacturer to correct the defect, malfunction, or problem or recall the dispenser immediately upon notification by the Commission to the manufacturer. If the manufacturer, distributor, or conductor detects or discovers any defect, malfunction, or problem with the dispenser, the manufacturer, distributor, or conductor, as applicable, shall immediately remove the dispenser from use or play and immediately notify the Commission of such action.

(6) The toll-free "800" number operated by the Problem Gamblers' Help Line of the Texas Council on Problem and Compulsive Gambling must be displayed on each pull-tab or instant bingo dispenser in such a manner that it is conspicuous and clearly visible to a player using the device.

(c) Conductor requirements.

(1) A conductor who has purchased or leased a dispenser may not allow another conductor to use such dispenser unless and until the former conductor has removed its break-open bingo tickets, instant bingo tickets, pull-tab bingo games and instant bingo cards from the dispenser.

(2) Each conductor who uses a dispenser at its bingo occasion shall affix to the dispenser an identification label which displays the conductor's name and Texas taxpayer identification number.

(3) The keys to open the locked doors to the dispenser's ticket dispensing area and coin and/or cash box must be in the possession and control of the operator in charge of the occasion, or someone designated by the operator. The operator in charge or the person designated shall present the keys to a Commission representative immediately upon request. The operator in charge shall be responsible for ensuring that the person so designated shall have the keys available at all times during the occasion.

(4) The entire deal or package shall be offered for sale, except as otherwise provided by §402.300(d)(5) of this chapter. All break-open bingo tickets, instant bingo tickets, pull-tab bingo games or instant bingo cards in any one column or sleeve must have the same serial number, color description, and must be of the same kind and type.

(d) Inspection. The Commission or the Commission's authorized representative(s) may examine and inspect any individual pull-tab or instant bingo dispenser. Such examination and inspection includes immediate access to the dispenser and unlimited inspection of all parts of the dispenser.

(e) Records.

(1) Each manufacturer selling pull-tab or instant bingo dispensers must maintain a log showing the date, model, and serial number of the purchased dispenser and to whom the dispenser was sold.

(2) Each distributor selling, leasing, or otherwise furnishing pull-tab or instant bingo dispensers must maintain a log showing the following information:

(A) the date, model and serial number of the dispenser;

(B) the name and Texas taxpayer identification number of the licensed organization to whom the pull-tab or instant bingo dispenser was furnished;

(C) name, address, and Texas taxpayer identification number of the manufacturer or distributor from whom the dispenser was purchased; and

(D) name, address, and Texas taxpayer identification number of the distributor to whom the dispenser was sold, leased, or otherwise furnished.

(3) Each conductor purchasing, leasing, or otherwise utilizing pull-tab or instant bingo dispensers must maintain a log showing the date, model, and serial number of the dispenser and the name, address, and Texas taxpayer identification number of the distributor from whom the dispenser was purchased, leased, or otherwise furnished. If multiple conductors hold an interest in a dispenser, each must maintain a separate record.

(4) All records, reports, and receipts relating to the pull-tab or instant bingo dispenser sales, maintenance, and repairs must be retained by the conductor on the premises where the conductor is licensed to conduct bingo or at a location designated in writing by the conductor for a period of four years for examination by the Commission. Any change in the designated location must be submitted to the Commission in writing at least ten days prior to the change.

(5) Manufacturers and distributors must provide and maintain for a period of four years the following information on each invoice or other document used in connection with a sale or lease, as applicable:

(A) date of sale or lease;

(B) quantity sold or leased;

(C) cost per dispenser;

(D) model and serial number of each dispenser;

(E) name and address of the purchaser or lessee; and

(F) Texas taxpayer identification number of the purchaser or lessee.

(f) Restrictions. No licensee may display, use or otherwise furnish a dispenser which has in any manner been marked, defaced, tampered with, or which otherwise may deceive the public or affect a person's chances of winning.

§402.304. System Service Provider.

(a) For purposes of this section, a system service provider is a person who provides an integrated electronic system for automated bingo services for the use by a licensed authorized organization. Such system will monitor and control all functions related to the registering, and accounting for bingo sales, prizes, inventory, prize fees, taxes, report generation, and other authorized services, as may be requested by the licensed authorized organization.

(b) An applicant for a license must file with the Commission a verified written application on a form prescribed by the Commission which must include:

(1) The name and address of the applicant;

(2) If a noncorporate entity, the name and address of each owner;

(3) If a corporation, the name and home address of each officer and director and each person owning 10% or more of any class of stock in the corporation;

(4) Information regarding whether the applicant or any person who is required to be named in the application has been convicted of a felony, criminal fraud, gambling, or gambling related offense, or a crime of moral turpitude;

(5) Information regarding whether the applicant or any person required to be named in the application is an owner, officer, director, shareholder, agency or employee of a commercial lessor licensed under this Act; and

(6) Any other information the Commission requests.

(c) A person is not eligible for a system service provider license if:

(1) The person has been convicted of a felony, criminal fraud, a gambling offense, a gambling related offense, or a crime of moral turpitude and it has been less than ten years since the termination of the sentence, parole, or probation related to the offense; or

(2) The person is an owner, officer, director, or employee of a holder of a commercial lessor licensed under this Act.

(d) The fee for a system service provider license is \$1,000 plus any cost incurred to conduct the criminal background checks.

(e) A system service provider shall not hold another license issued by the Commission.

(f) A license for a system service provider shall be revoked if within the license period any disqualifications under this rule or the Texas Bingo Enabling Act occur.

(g) A system service provider is subject to the same licensing provisions for manufacturers and distributors as stated in the Texas Bingo Enabling Act, §§2001.201 and 2001.203.

(h) The Commission at any time may inspect the system service provider's services and premises. The system service provider shall provide any information requested by the Commission in a timely manner.

(i) No automated bingo services or system may be sold, leased, or otherwise furnished to a licensed authorized organization unless and until an automated bingo service or system identical to the service or system intended to be sold, leased, or otherwise furnished has been presented to the Commission by the system service provider, at the system service provider's expense, and has been approved by the Commission for use within the state.

(j) If approved by the Commission, such approval extends only to the specific hardware, software and related equipment inspected and tested. Any changes made in or to the hardware, software and related equipment must be presented to the Commission for approval prior to selling or supplying such equipment or service to a licensed authorized organization.

(k) Once an automated bingo service or system has been approved, the Commission may keep the automated bingo service or system for further testing and evaluation for as long as the Commission deems necessary.

(l) Persons providing computerized bookkeeping or accounting services to licensed authorized organizations are exempt from the licensing requirements of this rule if only:

(1) Generalized, commercially available computer hardware is utilized;

(2) Generalized, commercially available software is utilized; and

(3) Any automated equipment utilized is not for the purpose of monitoring, networking, integrating, or controlling the operation of any automated equipment utilized by the licensed authorized organization.

(m) Each licensed system service provider shall file a quarterly report on a form prescribed by the Commission, reflecting the information contained in this rule. At the discretion of the Commission, the quarterly report may be filed via electronic means.

(n) The report shall be filed with regard to each calendar quarter and is due on or before the last day of the month following each calendar quarter.

(o) The report shall contain the name and 11-digit taxpayer identification number of each licensed authorized organization receiving automated bingo services from the system service provider and the amount paid by the organization for said services. In the event the system service provider ceases to provide automated bingo services or systems to a licensed authorized organization, the date of such termination shall be noted on the report.

(p) The system service provider shall retain a copy of the quarterly report for at least four years after the date on which the return is filed. The reports shall be maintained at the system service provider's principle business location as specified on the license application.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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For further information, please call: (512) 344-5113



SUBCHAPTER D. LICENSING REQUIREMENTS

16 TAC §§402.400 - 402.407

The new sections are proposed pursuant to Occupations Code, §2001.054, which authorizes the Commission to adopt rules necessary to enforce and administer the Bingo Enabling Act.

Occupations Code, Chapter 2001 is affected by the proposed new sections.

§402.400. General Licensing Provisions.

(a) Any person who wants to engage in a bingo related activity shall apply to the Commission for a license. The application must be on a form prescribed by the Commission and all required information must be legible, correct and complete. An application is incomplete if the following information is not provided:

(1) All information requested on the application form and applicable schedules;

(2) All supplemental information requested during the pre-licensing investigation period;

(3) The applicable license fee;

(4) The required bond or other security, if applicable; and

(5) Authorized signatures as required by the Commission.

(b) Information submitted by an applicant in the form of an applicable schedule shall be considered to be part of the application. Supplemental information should be submitted on a form prescribed by the Commission and all information required must be correct and complete.

(c) Information submitted by an applicant in a format other than an applicable schedule must be legible and must include the following:

(1) the name and address of the organization as it appears on the application;

(2) the Texas taxpayer identification number; or, if sole owner, the individual's social security number;

(3) a statement identifying the information submitted;

(4) the signature, printed name and telephone number of the person authorized to submit the information; and

(5) All supplemental information requested during the pre-licensing investigation period.

(d) Within 14 days after the Commission has received the application, the Commission will review the application and;

(1) notify the applicant if additional information is required;

(2) notify the applicant in writing why the application is being denied; or

(3) issue the license.

(e) If an application is incomplete, the Commission will notify the applicant. The applicant must provide the requested information within 14 days of such notification. Failure to provide the requested information within the 14 day time line will result in the denial of the license application.

(f) Notwithstanding the provisions of subsection (e) of this section, failure to submit all required information within 45 days from the date the application is received by the Commission will result in the denial of the application.

(g) Prior to the issuance of a license, the Commission may require an applicant to attend a pre-licensing interview. The Commission will identify the person or persons for the applicant who must attend the pre-licensing interview. The pre-licensing interview will consist of, at a minimum, the following:

(1) review of the Bingo Enabling Act;

(2) review of the Charitable Bingo Administrative Rules;

(3) licensee responsibilities;

(4) process pertaining to the different types of license application;

(5) bookkeeping and record keeping requirements as it involves bingo; and

(6) a statement from the person or persons attending the pre-licensing interview that they understand and the licensee will comply with the provisions of the Bingo Enabling Act and Charitable Bingo Administrative Rules.

(h) The Commission may deny an application based on information obtained that indicates non-compliance with the provisions of the Bingo Enabling Act and/or the Charitable Bingo Administrative Rules in connection with a pre-licensing interview and/or location inspection.

(i) Each licensed organization and organization issued a temporary authorization is required to file timely and complete required reports, as applicable to the type of current license held.

(j) An organization may withdraw an application at any time. Once the written request for withdrawal is received by the Commission, all processing of the application will cease and the withdrawal is considered final. If the organization wants to reapply for a license, a complete new application is required.

(k) Voluntary surrender of a license. A licensee may surrender its license for cancellation provided it has completed and submitted to the Commission the "Notice of Surrender of Bingo License". The cancellation of the license shall be final and effective upon receipt by the Charitable Bingo Operations Division of a copy of the resolution, or other authoritative statement of the licensee, requesting cancellation of the license and providing a requested effective date. The cancellation is effective as of the date identified in the letter. If no date is identified in the letter, the effective date shall be the date the Commission receives the letter. Notwithstanding cancellation of the license, the licensee must file all reports, returns and remittances required by law. The licensee shall surrender the license to the Commission on the effective date of the surrender. The Commission will send the licensee a letter confirming the surrender and resulting cancellation of the license.

(l) Administrative Hold. A licensee may place its license in administrative hold. The placement of a license in administrative hold shall be effective upon receipt by the Commission of a copy of the resolution, or other authoritative statement of the licensee, requesting administrative hold and citing a requested effective date. The licensee shall submit the license to the Commission on the effective date of the placement of the license in administrative hold. Once the license has been placed in administrative hold, all bingo activity (i.e. leasing, conducting bingo) must cease until the licensee files an amendment and the amended license is issued by the Commission and received by the licensee.

(m) Notwithstanding placement of the license in administrative hold, the licensee must file all reports, returns and remittances required by law. The licensee must also file a timely and complete application for renewal of the license each time the license is ripe for renewal.

(n) Each person required to be named in an application for license under the Bingo Enabling Act will have a criminal record history inquiry at state and/or national level conducted. Such inquiry may require submission of fingerprint card(s). FBI fingerprint cards are required for an individual listed in an application for a distributor, system service provider, or manufacturer's license and for an individual listed on an application who is not a Texas resident.

(o) Timely Renewal of License.

(1) An annual bingo license expires one calendar year from date of issuance.

(2) Each licensee is solely responsible for the timely renewal of its annual license.

(3) Failure of the licensee to receive the renewal notice(s) mailed by the Commission is not a mitigating circumstance in timely renewal. The renewal notice is merely a reminder and not a prerequisite to a licensee's ability to submit a renewal application.

(4) A licensee that has not submitted a renewal application timely must cease all bingo activity until properly licensed.

(5) Notwithstanding any other provision in the Charitable Bingo Administrative Rules, to be considered timely, the renewal application must be filed with the Commission no later than the license expiration date. A licensee may mail the renewal application but the postmark must clearly show a date that is no later than the license expiration date. To be timely filed, the Commission must receive the mailed application within seven days of the postmarked date of the mailed application and the postmarked date must clearly show a date that is no later than the license expiration date. Additionally, if the Commission does not receive the renewal application within seven days of the postmarked date of the mailed application, the renewal application is not timely filed. In computing the period of time for filing renewal applications, the last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

(p) Notification of changes. Each licensee must promptly notify the Commission in writing within ten working days of any change to information contained in a filed application regardless of whether the cause of the change is because information filed with the Commission has become inaccurate, or additions or deletions are necessary to reflect changes in the circumstances of the licensee. Examples of such changes may include the names of the organizational officers, the amount of rent charged for leased premises, the name of a member responsible for the conduct of games, or the name of an individual connected with a commercial lessor that would affect its eligibility to hold a license and, in the case of lessors, the name of a new authorized organization that intends to lease premises from it for the purpose of conducting bingo.

(q) Representation; personal receipt of documents. For purposes of this subsection, an individual shall be recognized by the Commission as an applicant or licensee's authorized representative only if the applicant or licensee has filed with the Commission a form prescribed by the Commission identifying the individuals currently listed as directors, officers, or operators, or if they are identified on the completed form "Schedule E Authorization of Representation". A person is not an authorized representative of the applicant or licensee unless specifically named on a form prescribed by the Commission as part of the application, or in the "Schedule E Authorization of Representation" that is on file with the Commission. Only those persons specifically named on a form prescribed by the Commission or in the "Schedule E Authorization of Representation" as an authorized representative shall be recognized by the Commission concerning any matter relating to the licensing process or license. Only the applicant or licensee or its authorized representative may receive from the Commission documents relating to the application or license without being required to submit a request under the Public Information Act.

§402.401. Temporary License.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Bingo liability--Includes, but is not limited to, prize fee, penalty, interest, or administrative penalty.

(2) Fee credit--An overpayment of a license fee.

(3) Fee refund--A return of money to a person who has a fee credit.

(4) Regular license--A license to conduct bingo that is effective for a period of one year or two years unless revoked or suspended by the Commission. A regular license may be referred to as an annual license.

(5) Temporary license--A license to conduct bingo that is in effect for a single bingo occasion.

(b) General.

(1) Requirements. The Commission may not issue a temporary license if the applicant has failed to file a required report, failed to pay a prize fee, penalty or interest, or has not distributed the proceeds calculated on the quarterly report for a charitable purpose.

(2) Duration. A temporary license is valid for no more than four consecutive hours during any 24-hour period.

(3) Display. The licensed authorized organization must conspicuously display during a temporary bingo occasion at the licensed bingo premises a temporary license, and, if applicable, verification of notification as referred to in subsection (d)(5)(E) of this section.

(4) Occasion not held. If a licensed temporary occasion is not held, within ten days of the scheduled occasion, an organization may submit a written request for a new playing date or for a refund or credit. The request must contain the following:

(A) an explanation of why the licensed temporary occasion was not held, and

(B) a specified new date for the temporary occasion or,

(C) a request to use, at a later date, the occasion as part of the organization's total number of allowed occasions.

(5) Voluntary surrender of regular license.

(A) If a licensed authorized organization that has one or more temporary licenses with a stated date and time voluntarily surrenders its regular license, the licensed authorized organization may conduct any remaining designated temporary occasions so long as the total number of occasions does not exceed six per calendar year. If over six previously specified occasions remain, the licensed authorized organization must provide to the Commission written notification of no more than six of the dates of the temporary licenses that will be utilized. This notification must be provided within ten days of surrender of the license. Otherwise, the Commission will cancel all temporary occasions that were specified on the temporary licenses and will refund the fees of the unused licenses or apply them to any outstanding bingo liabilities of the organization pursuant to §402.404 of this chapter.

(B) If the Commission denies or revokes a regular license by final and unappealable order, any temporary license held by the regular license holder that stated the specific date and time of any bingo occasion will likewise be denied or revoked and monies refunded or applied to outstanding bingo liabilities pursuant to §402.404 of this chapter.

(C) If the Commission denies or revokes a regular license by final and unappealable order or a license holder voluntarily surrenders a regular license, the license holder may not utilize any temporary license that does not have the date or time of a bingo occasion stated.

(6) All records that are required to be maintained under a regular license must be maintained for a temporary bingo license.

(c) Number and times of bingo occasions.

(1) If a licensed authorized organization that does not hold a regular license conducts bingo under a temporary license at a licensed bingo premises, no more than three bingo occasions may be conducted at that premises on a given day.

(2) The playing time of a temporary bingo occasion may not conflict with the playing time of any other license at the bingo premises on that date unless otherwise provided by law.

(d) Regular license holder.

(1) A regular license holder must apply for a temporary license at least seven working days prior to the bingo occasion.

(2) A regular license holder may submit an application for a temporary license by fax only if the organization has a sufficient temporary license fee amount in their temporary license fee account with the Commission to cover the total number of temporary occasions requested.

(3) Quarterly reports filed by a regular license holder must include proceeds from all licensed temporary occasions held during the quarter.

(4) There may be no more than three occasions per day conducted by no more than two licensed, authorized organizations.

(5) The Commission may issue a temporary license to a regular license holder without listing the specific date or time of a bingo occasion. However, the temporary bingo occasion must be conducted at the same location and with the same primary operator as shown on the organization's regular license.

(A) Application. To receive a temporary license without a specific date or time designated, a regular license holder must submit an application on the prescribed form that indicates the total number of temporary licenses requested for the license period. In addition, the regular license holder must provide the total amount of license fees for all temporary licenses requested.

(B) Notification. An authorized organization that has a temporary license that does not state the date or time for its use must notify the Commission by submitting notification on a form prescribed by the Commission.

(C) Expiration. The playing date or time for a temporary license issued without the specific date or time identified must be prior to the expiration date of the annual license in effect at the time the temporary license application was filed.

(D) Credit or refund. The Commission will not credit or refund a temporary license fee when an organization fails to timely notify the Commission of the playing date and time prior to the expiration of the annual license that was in effect when the temporary license was issued.

(E) Verification. The verification of receipt of notification must be posted adjacent to the applicable temporary license during the bingo occasion.

(6) In accordance with Occupations Code, §2001.108(e), the Commission may issue to a regular license holder additional temporary licenses in excess of the number of temporary licenses specified under Occupations Code, §2001.103(e) if the following conditions are met:

(A) The regular license holder submits a completed application on the form prescribed by the Commission; and

(B) The date and times stated on the application are consistent with the day and times licensed to the organization that has ceased or will cease to conduct bingo as provided in Occupations Code, §2001.108.

(C) The Commission has not acted on an amendment application filed under Occupations Code, §2001.108(a).

(7) If the organization is issued the amendment license filed under Occupations Code, §2001.108 prior to being issued the temporary license, the temporary license application shall be discontinued, and any license fees submitted will be credited to the organization's temporary license fee account.

(e) Non-regular license holder.

(1) Application. A non-regular license holder that wishes to conduct a bingo occasion must file a complete application for a temporary license on a form prescribed by the Commission at least 30 working days prior to the first bingo occasion to be played under the temporary license. If 12 months have elapsed since the organization last filed a temporary license application with the Commission, the organization must submit with their application a list of all officers, directors, operators, and workers for the organization on a form prescribed by the Commission.

(2) Proceeds distribution. All net proceeds reported on the quarterly report must be distributed for a charitable purpose in the quarter the funds are accrued unless the funds are distributed to a charitable purpose and reported to the Commission in the immediately subsequent quarter.

§402.402. Registry of Bingo Workers.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Caller--an individual who operates the bingo ball selection device and announces the balls selected.

(2) Cashier--an individual who sells and records bingo card and pull tab sales to bingo players and/or pays winners the appropriate prize.

(3) Manager--an individual who oversees the day-to-day operation of the bingo premises.

(4) Operator--means an active bona fide member of a licensed authorized organization that has been designated on a form prescribed by the Commission prior to acting in the capacity as the organization's primary operator. An individual designated by an authorized organization as an "alternate operator" shall perform all the duties and responsibilities of an operator in the absence of the primary operator.

(5) Sales Person--an individual who monitors bingo players, sells bingo cards and pull tabs, verifies winners and/or awarding prizes. A sales person may be referred to as a floor worker, runner or usher.

(b) Who must be listed on the Registry of Approved Bingo Workers. The following persons must be listed on the Registry of Approved Bingo Workers prior to being involved in the conduct of bingo:

- (1) Operator
- (2) Manager
- (3) Cashier
- (4) Usher
- (5) Caller

(6) Salesperson

(c) Each individual must submit a completed Texas Application for Registry of Approved Bingo Workers as prescribed by the Commission to remain on the Registry of Approved Bingo Workers.

(d) The registrant will be added to the registry as soon as possible after the Commission has determined that the person is eligible to be involved in the conduct of bingo or act as an operator.

(e) For purposes of the Registry of Approved Bingo Workers, each operator must be designated on the licensed authorized organization's license to conduct bingo application pursuant to the Occupations Code, §2001.102(10) as the member who will be responsible for the conduct of bingo under the terms of the license and the Bingo Enabling Act. An individual included on the registry may not serve as the primary operator for an organization until the approved license to conduct bingo has been issued to the licensed organization listing the individual as the operator, received by the organization, and displayed at the location. An organization must submit a registered operator on a form prescribed by the Commission prior to the operator acting in the capacity of primary operator.

(f) Expiration of listing on registry of approved bingo workers. A registrant's listing on the registry is valid for three years from the last date of inclusion on the registry, unless the individual's listing is removed for cause prior to the expiration of three years. Every three years after the date the person's name is listed on the registry the individual shall submit a form prescribed by the Commission stating the person's intent to remain on the registry. Failure to timely submit the prescribed form will result in the deletion of the worker's name from the registry. A person whose name is deleted from the registry due to failure to verify the intent to remain on the registry may be re-listed on the registry by filing the required form.

(g) How to be listed on the Registry of Approved Bingo Workers. For a person to be listed on the Registry of Approved Bingo Workers, a person must:

(1) complete a Texas Application for Registry of Approved Bingo Workers form as prescribed by the Commission;

(2) submit the required fee for the cost of the card or form;
and

(3) be determined by the Commission to not be ineligible under Occupations Code, §2001.105(a)(6).

(h) An individual listed on the registry must notify the Commission of any changes to information contained on the Texas Application for Registry of Approved Bingo Workers on file with the Commission within 30 days of the change in information. Such notification shall be in writing or other approved electronic means.

(i) Identification Card for Approved Bingo Worker.

(1) The Commission will issue an identification card indicating that the person is listed in the registry. A registered worker and operator must wear his/her identification card while on duty.

(2) The identification card worn by the registered worker or operator while on duty must be visible. The identification card shall list the individual's name and unique registration number, as issued by the Commission. An individual may obtain the unique registration number from the Registry of Approved Bingo Workers on the Commission's website or by requesting the number from the Commission.

(3) An identification card is not transferable and may be worn only by the individual identified on the card.

(4) Upon request by a Commission employee, a person described in subsection (a) of this section shall present personal photo identification in order to verify the identification card is that person's card.

(j) How to Obtain Approved Identification Cards.

(1) A completed identification card may be obtained from the Commission by submitting the required fee and submitting the required form.

(2) The fee for an identification card or identification card form may not exceed \$5.00.

(3) A person who has been approved to work in charitable bingo may complete an identification card form provided by the Commission for use while on duty. Blank identification card forms may be obtained from the Commission. The person requesting the identification card form(s) must submit the required fee and the required form for the blank identification card form.

(4) The identification card prepared by the individual may only be on a prescribed Commission card form and must be legible and include the individual's name and registration number.

(k) A licensed authorized organization which is reporting conduct where there is a substantial basis for believing that the conduct would constitute grounds for removal or refusal to list on the registry shall make the report in writing to: Bingo Registry, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630.

(l) The provisions of the Occupations Code, §2001.313 related to the registry of bingo workers do not apply to an authorized organization that does not have an annual license to conduct bingo who receives a temporary license to conduct bingo.

(m) If the Commission proposes to refuse to add or proposes to remove the person from the Registry of Approved Bingo Workers consistent with Occupations Code, §2001.313, the Commission will give notice of the proposed action as provided by Government Code, Chapter 2001.

§402.403. Licenses for Conduct of Bingo Occasions and to Lease Bingo Premises.

(a) License for Conduct of Bingo.

(1) License fee. An application for a license to conduct bingo must be accompanied by a license fee. An organization must provide the required information, as part of its license application, so that the applicant can calculate the amount of license fee that must accompany the application.

(2) A conductor may hold only one annual license to conduct bingo occasions. The license is valid for only the specific location indicated on the face of the license.

(3) Except for an occasion conducted under a temporary license, a licensed authorized organization must conduct regular bingo to be eligible to sell pull-tab bingo tickets.

(4) An organization applying to conduct bingo occasions at premises other than those used by it for its general activities shall submit with its application a certified copy of the minutes of the governing board of the local unit of the applicant that reflect the governing board's vote to conduct bingo occasions at a location other than the premises used by the organization for its general activities. If the articles of incorporation, by-laws, or other organizing instrument of the applicant requires approval by one or more of the state, national, or other higher governing bodies of the organization for the local unit to conduct any of its activities at a separate location, the applicant shall also submit

certified copies of the documents that reflect the required approval by those governing bodies.

(5) Each applicant for a license to conduct bingo occasions must demonstrate that it is organized and operated primarily for purposes other than the operation of bingo activities.

(b) License to lease bingo premises.

(1) Fee. An application for a license to lease bingo premises must be accompanied by a license fee. The license fee is based upon the estimated annual gross rentals from licensed organizations that will conduct bingo at the location designated in the application for a license to lease bingo premises. For the purpose of this rule, "gross rentals from licensed organizations" means the total amount of rent owed by the licensed organizations, including, but not limited to, building rentals, payments for utilities, fixtures, security services, etc. The fee that must accompany the application is determined by Occupations Code, §2001.158(a).

(2) License.

(A) Each location to be leased as a bingo premises must be separately licensed pursuant to separate applications.

(B) Except as required by Occupations Code, §2001.152(a), the Commission may not issue more than one license to lease bingo premises for any one location.

(C) When more organizations apply to play bingo on a premises of a commercial lessor than can be licensed for the premises, the Commission will process only the number of applications for which there are openings with the commercial lessor. The Commission will process the applications in the order in which they are received. Additional applications in excess of the number that may be licensed for the commercial lessor's premises will be denied.

(c) Temporary license to conduct bingo occasions.

(1) An authorized organization that does not have an annual license to conduct bingo and intends to conduct bingo occasions must apply to the Commission for a temporary license on a form prescribed. The complete application, including all required schedules must be filed with the Commission at least 30 working days in advance of the first bingo occasion to be played under the temporary license. An organization that has an annual license to conduct bingo shall apply at least seven working days in advance of the occasion to be played under the temporary license, provided that the only proposed change is the date, time and/or location.

(2) Fee. An application for a temporary license to conduct bingo occasions must be accompanied by a \$25 license fee. A licensed organization that is applying for a temporary license shall pay the \$25 license fee from its bingo bank account. An organization may submit additional funds that can be applied to license fees in connection with future license applications.

(3) Licensed Temporary Occasions Not Held. If a licensed temporary occasion is not held, an organization shall submit to the Commission within ten days of the original temporary license date, the following:

(A) the original temporary license or letter of authority;

(B) a written explanation of why the licensed temporary occasion was not held; and

(C) a written request to either amend the license to a new date, or to credit or refund the temporary license fee.

(4) A temporary license is valid for no more than four consecutive hours during any 24-hour period.

(d) License amendment. A licensee may not begin amended activities until:

(1) the application or notification of change is approved in writing by the Commission;

(2) the date of the change is effective; and

(3) the amended license or written notification from the Commission authorizing the change is received by the licensee and is displayed as required by the provisions of the Bingo Enabling Act during the conduct of bingo.

§402.404. License Fees.

(a) Original License Application.

(1) License to Conduct Charitable Bingo.

(A) An initial license fee for an original license to conduct charitable bingo or an original license to lease bingo premises submitted by an authorized organization that does not have a license issued under the Bingo Enabling Act, must be paid from the organization's general fund bank account.

(B) An applicant may be required to submit additional license fees if the estimated gross receipts used to calculate the license fee are not reasonable when compared to gross receipts of other organizations with the same number of occasions conducting bingo at the same bingo premises. If no such organizations exist, the Charitable Bingo Operations Division may use gross receipts amounts from organizations with the same number of occasions conducting bingo at similarly situated bingo premises. These amounts are used to establish the gross receipts amount upon which the applicant's license fee is based and must be submitted.

(2) Commercial License to Lease Bingo Premises.

(A) License fees for an original license to lease bingo premises submitted by an authorized organization licensed to conduct bingo must be paid from the organization's bingo bank account.

(B) An applicant may be required to submit additional license fees if the estimated gross rental income used to calculate the license fee is not reasonable when compared to the gross rental income at similarly situated bingo premises. These comparative amounts are used to establish the gross rental income amount upon which the applicant's license fee is based and must be submitted.

(3) Understating the anticipated gross receipts or rental income from a licensed activity for any purpose by an applicant or licensed entity may be grounds for administrative disciplinary action against the licensee.

(b) Changes Within Six Months of the License Term.

(1) Within the first six months of issuance of an organization's original license, the organization must complete the Worksheet for Calculating License Fee and Bond Amount for a Conductor Amendment (Schedule F) before it may amend its license to increase the number of occasions. The organization must submit additional license fee in an amount equal to the amount of license fee reflected in the Worksheet for Calculating License Fee and Bond Amount for a Conductor Amendment.

(2) An organization shall re-estimate its annual gross rental income and submit any balance due in license fee amount if there is an increase within six months of the issuance of the original lessor license in:

(A) the number of organizations conducting bingo at a licensed location; and

(B) the number of bingo occasions conducted at the licensed location.

(c) License Renewal Fee.

(1) The amount of license fee to be paid upon renewal of a license to conduct bingo or license to lease bingo premises is the recalculated license fee amount calculated for the preceding year.

(2) If the recalculation of the license fee amount for the previous year reflects an underpayment of the license fee amount for that year, the incremental difference must be submitted by the organization before the license may be renewed.

(3) Upon written request by an organization to renew its license to conduct bingo or license to lease bingo premises that is in administrative hold, the organization may submit a renewal fee of \$100 in lieu of the recalculated fee amount from the preceding year.

(4) The Commission may require an amount of license fee in addition to the recalculated fee at renewal if there is a change in:

(A) playing location;

(B) rental amount per occasion; or,

(C) increase in the number of occasions bingo is conducted.

(5) If an organization requests its license be placed in administrative hold upon the renewal of the license and submits an estimated Class A (\$100 license fee), the organization shall submit additional license fee when it files an application to amend a license to conduct charitable bingo if the organization amends its license to begin conducting bingo within the first six months of the license term. The additional license fee amount to be submitted is the license fee amount reflected on the Worksheet for Calculating License Fee and Bond Amount for a Conductor Amendment.

(6) If an organization requests its license be placed in administrative hold upon the renewal of its lessor license and submits an estimated Class A (\$100 license fee), the organization shall submit an additional license fee when it files the application to amend a commercial license to lease bingo premises if the organization amends its license to begin leasing bingo premises within the first six months of the license term. The additional license fee amount to be submitted is the license fee amount is the estimated annual gross rentals from licensed organizations conducting bingo at the licensed location less the license fee amount paid when the organization submitted its renewal application.

(d) Annual License Fee Recalculation.

(1) For the purpose of determining the license fee recalculation for a license to conduct bingo or license to lease bingo premises, the annual gross receipts or gross rental income, as applicable, shall be based on the four consecutive quarterly returns due immediately prior to the license expiration date.

(2) If a quarterly return is due less than 50 days prior to a license expiration, the gross receipts or gross rental income reported on that return will not be available to be used to calculate the annual gross receipts or gross rental income. Instead, the gross receipts or gross rental income reported on the four immediately preceding quarterly returns, as applicable, will be used to recalculate the organization's license fee.

(3) If an organization fails to file a report for one or more quarter(s) of the license period, or if there are not four quarters available for any other reason, such as, the original conductor is licensed less than a full year, the Commission shall estimate the quarterly gross

receipts or gross rental income for the missing quarter(s) to recalculate the organization's license fee. The estimated gross receipts or gross rental income per quarter is determined by adding the gross receipts or gross rental income, as applicable, reported on the returns filed in the license period and dividing this number by the number of returns filed. The resulting number would then be multiplied by four to calculate the organization's license fee.

(4) License no longer exists.

(A) Notwithstanding the fact that an organization conducted bingo under a license that ceased to exist for whatever reason, the organization must submit the recalculated license fee for the period that the organization conducted bingo and collected gross receipts.

(B) Notwithstanding the fact that an organization which leased bingo premises under a license that ceased to exist for whatever reason, the organization must submit the recalculated license fee for the period that the organization leased the premises and collected gross rental income.

(C) If an organization ceases to be licensed for whatever reason, all gross receipts or gross rental income collected (from the period after the last quarterly return used to recalculate the license fee for the prior year) is used to recalculate the final license fee due. If the organization fails to file a return for any required period(s), an estimated return will be used. The organization shall submit any balance due after license fee recalculation.

(5) The Commission may recalculate license fees for up to four consecutive immediately preceding license periods if a change in an organization's reported gross receipts or gross rental income occurs as a result of an audit, or if the original recalculation was determined by using estimated gross receipts or gross rental income.

(6) If there is a change in an organization's reported gross receipts or gross rental income, the organization may submit a written request to the Charitable Bingo Operations Division to recalculate its license fees for up to four immediately preceding license periods.

(e) Overpayment of License Fee.

(1) An overpayment of an annual license fee based on the previous year's recalculation is a credit and shall be applied to the license renewal license fee for the next license period.

(2) An organization may submit a written request to have the overpayment of an annual license fee based on the previous year's recalculation applied to:

(A) outstanding liabilities;

(B) annual license fee for another license issued to the organization under the Bingo Enabling Act;

(C) temporary license fee; or,

(D) amendment license fee.

(3) An organization may submit an excess license fee payment to be applied to fees in connection with future license applications. At the same time as the submission of the excess license fee, the organization must designate in writing the license application type(s) to which the excess license fee payment is to be applied.

(f) Refund of Payments.

(1) Upon written request for a refund to the Charitable Bingo Operations Division by the organization, an overpayment of annual license fee based on the previous year's recalculation, temporary license fees, and amendment license fees may be refunded to an organization that ceases to be licensed.

(2) Upon written request for a refund to the Charitable Bingo Operations Division, a license fee submitted with an application for a license that is withdrawn before the license is issued may be refunded to an organization which does not have an annual license.

(3) Upon written request for a refund to the Charitable Bingo Operations Division, only a license fee submitted with an application for an annual license that is withdrawn before the license is issued may be refunded to an organization which has another annual license.

(4) Upon written request for a refund to the Charitable Bingo Operations Division, a temporary license fee for a licensed temporary occasion in which bingo was not conducted may be refunded to an organization that does not have an annual license.

(5) A request for a refund of license fee must be written. If any outstanding liabilities exist, the license fee payment will be applied to the outstanding liability. Any balance from the license fee payment, after liabilities are paid, shall be refunded to the organization provided no other outstanding liabilities under the Bingo Enabling Act to the State exist. A refund will not be issued until all liabilities to the State under the Bingo Enabling Act have been paid and all quarterly reports have been filed and processed by the Commission.

(6) If an application for a license is denied, the Director may refund the application fee less the cost incurred by the Charitable Bingo Operations Division to process the application.

(g) Transfer of Commercial License to Lease Bingo Premises.

(1) All gross rental income collected in connection with a license to lease bingo premises that has been transferred during the term of the license shall be used to recalculate the license fee.

(2) A license fee recalculation credit in connection with a license to lease bingo premises that was transferred during the term of the license shall be credited to the current license holder at the time of license renewal.

(3) A license fee recalculation balance due for a license to lease bingo premises that was transferred during the term of the license shall be the liability of the current license holder at the time of license renewal.

(h) The license fee in connection with a license to manufacture bingo supplies, distribute bingo supplies, or system service provider is not refundable.

(i) An organization must submit a fee of \$10.00 to the Commission at the time the licensed organization notifies the Commission of a change in the time or date of a game for an annual license to conduct bingo.

(j) Temporary Authorization to Conduct Bingo.

(1) The amount of gross receipts collected in connection with a temporary authorization is used to recalculate the annual license fee.

(2) An organization conducting bingo pursuant to a temporary authorization must comply with the same statutory and administrative rule requirements, annual gross receipts fee schedule, and quarterly return filing requirements as an organization which has an annual license to conduct bingo.

(3) If an organization conducting bingo pursuant to a temporary authorization does not become licensed to conduct bingo, the fee for the temporary authorization will be determined by the fee schedule for a license to conduct bingo set out in Occupations Code, §2001.104(a).

§402.405. Temporary Authorization.

(a) A temporary authorization shall be issued only to a person who is not licensed by the Commission but who has filed an original application.

(b) A temporary authorization to conduct a bingo-related activity may only be issued to a person who will conduct a bingo-related activity at the same location for which the person has a pending original application to conduct a bingo-related activity. A temporary authorization shall not be issued to a person if the proposed location to conduct bingo is not authorized under the provisions of the Bingo Enabling Act.

(c) A temporary authorization shall be issued for a stated period of time not to exceed 60 days. A temporary authorization may be extended upon written request by the person to whom the temporary authorization was issued. Such request must be filed with the Commission at least seven working days prior to the time the temporary authorization expires. Extensions shall be for a period of time not to exceed 60 days. No more than two extensions may be issued.

(d) A request for an extension shall include:

(1) the complete name of the organization requesting the extension;

(2) the Texas taxpayer identification number of the organization requesting the extension;

(3) a complete explanation of the basis for the request; and

(4) the specific reason(s) supporting the need for an extension.

(e) An organization who is not in compliance with the Bingo Enabling Act and/or the Charitable Bingo Administrative Rules will not be granted an extension unless the organization becomes compliant during the period of the original temporary authorization.

(f) An organization conducting bingo under a temporary authorization that desires to obtain a temporary license shall be subject to the same requirements in §402.403(c)(1) of this chapter regarding an organization not holding an annual license to conduct bingo.

(g) A temporary authorization is not a license.

(h) A temporary authorization may not be amended.

(i) An annual license that has been issued to an applicant shall expire one year from the date of the first issuance of any temporary authorization under this section.

§402.406. Exemptions from Licensing Requirements.

(a) Any group or organization that intends to conduct a game under Occupations Code, §2001.551, shall submit in writing to the Commission, the facts that support its exemption from the licensing requirements. If the organization or group is exempt, the Commission will issue a letter of exemption which must be available on the premises at all times during the conduct of bingo. The group or organization must notify the Commission within ten working days if there is any change in their status which may affect their eligibility for an exemption.

(b) An exemption issued by the Commission is valid for two years from the date of issuance. It is the responsibility of the group or organization holding the exemption to reapply in a timely manner.

(c) Types of allowable exemptions.

(1) An organization conducting on behalf of persons 60 years of age or over shall submit a written request for an exemption describing the organization itself and who will be eligible to participate

in the bingo games conducted by the organization, as per the eligibility requirements of Occupations Code, §2001.551.

(2) A Senior Citizens' Association shall submit a written request for an exemption describing the association and how it is organized. Additionally, the request shall include who will be eligible to participate in the bingo games conducted by the association.

(3) A community center having any program operated or funded by a governmental entity shall submit a written request for an exemption. The request shall include the type of program funded by the governmental entity and who will be eligible to participate in the bingo games conducted by the community center.

(4) A nursing home or hospital shall submit a written request for an exemption. The request shall include a copy of the certificate from the Texas Health Department and a statement regarding who will be eligible to participate in the bingo games conducted by the nursing home or hospital.

(5) A retirement home shall submit a written request for an exemption. The request shall include a brochure or other documentation describing the retirement home and a statement regarding who will be eligible to participate in the bingo games conducted by the retirement home.

§402.407. Unit Manager.

(a) Notification.

(1) An individual shall not provide services as a unit manager to licensed authorized organizations that have formed a unit until the following occurs:

(A) the Commission receives the unit accounting agreement executed by all members of the unit with the name of the unit manager designated therein;

(B) the individual holds a unit manager license issued by the Commission;

(C) the individual posts a bond or security, for each unit, in the form prescribed by §402.603(b) of this chapter; and

(D) the individual provides information to the Commission relating to the location where the unit manager services will be performed and where the records will be maintained.

(2) Bond. The required initial bond amount for a unit manager shall not exceed \$30,000.00 for each unit. The unit manager's required initial bond amount will be determined by identifying the license class of each member of the unit and adding the corresponding dollar amounts for each member as follows:

(A) Classes A - D \$1000

(B) Classes E - H \$3000

(C) Classes I - J \$6000

(3) A unit manager shall provide written notification to the Commission of any change in the information in the unit manager's most recent application for a unit manager license or renewal. The unit manager shall notify the Commission of the change in the information not later than the 15th day after the date of the change.

(b) Annual License Fee for a Unit Manager. The non refundable annual license fee for a unit manager may not exceed \$250.00.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 7, 2005.

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SUBCHAPTER E. BOOKS AND RECORDS

16 TAC §§402.500 - 402.504

The new sections are proposed pursuant to Occupations Code, §2001.054, which authorizes the Commission to adopt rules necessary to enforce and administer the Bingo Enabling Act.

Occupations Code, Chapter 2001 is affected by the proposed new sections.

§402.500. General Audit Rule.

(a) Definitions.

(1) For purposes of this section, a licensee may include a person issued a license under the Bingo Enabling Act, or a Unit.

(2) "Re-deposit" means the amount of money that must be deposited into the bingo account to restore bingo proceeds that were disbursed from the bingo account for items not authorized by the Bingo Enabling Act or the amount of bingo proceeds not deposited in the bingo account as required by Occupations Code, §2001.451(b).

(b) General Provisions. The Commission will perform an audit to determine whether a licensee is in compliance with the requirements of the Bingo Enabling Act and the Charitable Bingo Administrative Rules. The audit will be conducted in accordance with the Charitable Bingo Operations Division Audit Reference and Procedures Manual. An audit is a formal examination of a licensee's accounting records and business activities. An audit may be conducted as a result of:

(1) a request by Charitable Bingo Operations Division management;

(2) a request by another division of the Commission;

(3) a request by a Commission auditor based on compliance violations noted in a previous inspection, game observation, or review; or

(4) by random selection process based on the Charitable Bingo Operations Division's risk assessment.

(c) Notification. The Commission will notify in writing the licensee's primary operator, business contact, officer, unit manager or designated agent. The notification letter will state the period to be audited and identify the records that must be available for Commission review. Certain forms including, but not limited to, a questionnaire and a physical inventory request with instructions, may be sent by the Commission to the licensee with the notification letter. The forms must be completed prior to the entrance conference and the information must be provided in the manner prescribed by the Commission. Not later than ten working days from the date of the notification letter, the auditor will contact the licensee and schedule the date, time and place of the entrance conference. If the auditor is unable to coordinate with the licensee regarding the date and time of the entrance conference, the auditor shall set the date and time of the entrance conference and provide the licensee with written notice of the entrance conference at least ten working days prior to the entrance conference.

(d) Records Required. Records covering the designated audit period must be provided to the auditor at the entrance conference. The auditor may require other records or information based on findings during the audit. If applicable to the licensee, it must provide non-confidential records that pertain to the following in sufficient detail to substantiate compliance with the Bingo Enabling Act:

(1) The operation of bingo;

(2) The licensee's charitable distributions;

(3) The licensee's charitable purpose;

(4) Rental receipts;

(5) Expenditures; and

(6) Lease agreements.

(e) Entrance Conference.

(1) The auditor will meet with the responsible persons including the primary operator, business contact, bookkeeper, unit manager, designated agent or any other person familiar with the licensee's bingo operations. The licensee must complete the forms included with the notification letter prior to the entrance conference and must provide the requested records and completed forms at the entrance conference.

(2) If disclosure of confidential information during the audit would impair a constitutional or statutory right of privacy, then the information may be withheld so long as the licensee provides the Commission with a brief description of the information withheld, the statutory or constitutional basis for non-disclosure, and the records necessary to substantiate compliance with the Bingo Enabling Act and applicable Charitable Bingo Administrative Rules. Information the licensee believes is privileged, such as a privileged attorney/client communication or any other privilege recognized under the Texas Rules of Evidence, may be withheld so long as the licensee provides the Commission with a brief description of the information withheld, the privilege claimed, and the records necessary to substantiate compliance with the Bingo Enabling Act and applicable Charitable Bingo Administrative Rules.

(3) The ability of the licensee to withhold certain information based on privacy rights or privileges does not in any way relieve the licensee of its burden to substantiate compliance with the Bingo Enabling Act and applicable Charitable Bingo Administrative Rules. If any records requested are not provided at the time of the entrance conference the auditor will issue a written final request for these records. Except for information that is withheld due to the licensee's claim of a valid privilege, the requested records must be provided within ten working days of receipt of the request.

(4) The auditor and the licensee's authorized representative will sign a receipt form documenting the specific original records received by the auditor. Alternatively, the licensee may provide the auditor with copies of all requested records at the expense of the licensee.

(f) Fieldwork. The audit may include, but is not limited to, reviewing the licensee's financial records, performing a game observation, preparing paper depletion analysis, preparing pull-tab ticket analysis, examining all books and records necessary to substantiate the licensee's quarterly reports, verifying that bingo proceeds are disbursed according to the Bingo Enabling Act and the Charitable Bingo Administrative Rules, and meeting with members of the licensee involved in bingo to discuss its bingo operation. The auditor will provide the licensee with an estimated completion date of all fieldwork.

(g) Exit Conference.

(1) At the conclusion of the audit, the auditor will schedule an exit conference with the licensee. At the exit conference, the auditor will provide the licensee with the draft audit report, present audit findings, discuss violations noted, explain any audit schedules and explain any supporting exhibits. The auditor will also return original records to the licensee.

(2) The licensee may be represented by the primary operator, business contact, officer, unit manager, designated agent or any other person familiar with the bingo operations and accounting systems. In addition to the licensee's representative, the licensee may allow other persons to attend the exit conference.

(3) The licensee will have an opportunity to gather additional documentation related to the audit findings, alleged violations, or fund reimbursement. The licensee may use the exit conference as an avenue to resolve any alleged audit violations. The licensee will have 15 working days after the exit conference date to respond in writing to all relevant audit findings and recommendations contained in the draft audit report.

(4) Unless otherwise provided by law, the licensee must make available a copy of the audit report with detailed findings, recommendations and responses to all officers, directors, and members of the licensee.

(h) Resolution. Proof of corrective measures taken to address any alleged audit violations must be submitted in writing to the Commission within 30 working days of the exit conference. If it is determined that a licensee must make a re-deposit into its bingo bank account, the re-deposit may not be made with funds derived from the conduct of bingo.

§402.501. Distribution of Proceeds for Charitable Purposes.

(a) Before the end of each quarter, each licensed authorized organization shall disburse for charitable purposes an amount not less than 35% of the organization's adjusted gross receipts from the last preceding quarter, less the amount of authorized expenses not to exceed 6% of gross receipts.

(b) If a licensed authorized organization fails to meet the requirements of this rule for a quarter, the Commission in applying appropriate sanctions may consider whether, taking into account the amount required to be distributed during that quarter and the three preceding quarters and the charitable distributions for each of those quarters, the organization has distributed a total amount sufficient to have met the 35% requirement for that quarter and the three preceding quarters combined.

(c) For purposes of this rule, adjusted gross receipts means gross receipts less the amount of cost of goods sold by an organization and the prizes paid in the preceding quarter.

(d) Cost of goods sold by an organization is the actual cost of disposable bingo paper, instant bingo tickets, or pull-tab bingo games purchased by the organization in the preceding quarter. The cost of goods sold shall accurately reflect all discounts and returns realized by the organization. Each licensed authorized organization shall maintain, for a period of not less than four years, all invoices, credit memos, and all other supporting documentation for substantiating the cost of goods sold.

(e) For all disposable bingo paper, instant bingo tickets, and pull-tab bingo game sales made, returns accepted, and all other transactions, each licensed distributor shall furnish the licensed authorized organization a detailed invoice, credit memo, or other document, which shall include the following information:

(1) The authorized organization's name, address, and Texas taxpayer identification number;

(2) The address to which the shipment was delivered;

(3) The date of sale or credit;

(4) The quantity sold or credited;

(5) The conditions of the sale or credit; and

(6) If the transaction involves disposable bingo paper:

(A) The series number and serial number; and

(B) The cut and collation.

(7) If the transaction involves instant bingo tickets or pull-tab bingo games:

(A) The form number; and

(B) The serial/series number for each deal. Each distributor shall maintain a copy of the documents described in this subsection for a period of not less than four years.

(f) The Director of the Charitable Bingo Operations Division or his designee may reduce or disallow any cost of goods expense item which is not adequately supported or is not reasonable and necessarily expended in connection with the conduct of any game of bingo.

§402.502. Charitable Use of Proceeds.

(a) An organization must maintain and make available to a representative of the Commission or designee:

(1) a complete copy of the application for exemption, either I.R.S. Form 1023 for 501(c)(3) organizations or I.R.S. Form 1024 for other non-profits, which provides a full description of the purposes and the activities of the organization in relation to the exempt status filed with the Internal Revenue Service;

(2) a letter of good standing from the parent organization, if applicable, copy of the organization's Articles of Incorporation, Articles of Association, Trust Indenture, Constitution; or

(3) other enabling document and any amendments and any adopted bylaws which provide in writing the specific cause, deed or activity that is consistent with the organization's purposes and objectives for which bingo net proceeds will be used.

(b) Organizations Licensed must furnish with their application to conduct bingo:

(1) a copy of the application for exemption, I.R.S. Form 1023 for 501(c)(3) or I.R.S. Form 1024 for non-profits;

(2) a conformed copy of the organization's Articles of Incorporation, Articles of Association, Trust Indenture, Constitution; or

(3) other enabling documents and any amendments and any adopted bylaws and provide in writing the specific cause, deed or activity that is consistent with the organization's purposes and objectives for which bingo net proceeds will be used.

(c) Nothing in this rule precludes the Commission from requesting supplemental information in order to substantiate compliance with the Bingo Enabling Act.

(d) Record Keeping:

(1) All distributions for charitable purposes must be made from the bingo checking account. A distribution made from the bingo checking account into another account maintained by the organization must be substantiated with documentation and used for a cause, deed,

or activity dedicated to the charitable purposes of the organization consistent with the 26 U.S.C. §501 tax exemption of the organization or the purposes or objective for which the organization qualifies as an authorized organization

(2) A licensed authorized organization must submit quarterly, on a form prescribed by the Commission, a list of the charitable distributions made by the organization during the quarter.

(3) All records to substantiate the use of net proceeds must be maintained for a period of four years.

(4) Records required by the Commission as supporting documentation of use of net proceeds made by the licensed authorized organization may include one or more of the following: annual reports; treasurers reports; historian records; balance sheets; accountants work papers; time cards; meeting minutes; committee minutes; canceled checks; letters of acknowledgment; newspaper articles; publications; invoices; receipts; correspondence file; reports to governing parent organizations; flyers, pamphlets, brochures; advertisement; log, schedule or calendar; licensed authorized organizations monthly bulletins; criteria for soliciting applicants awarding scholarships; IRS Form 990; IRS Form 940 and 941; and IRS examination reports.

(e) A use of net proceeds, which would not be considered as a cause, deed, or activity dedicated to the charitable purposes of the organization and not consistent with the 26 U.S.C. §501 tax exemption of the organization or the purposes or objective for which the organization qualifies as an authorized organization, are any use of proceeds which:

(1) inures to the benefit of any private shareholder, individual, officers, governing body or member other than as reasonable compensation for services rendered;

(2) has no documentation to substantiate the use of net proceeds; or

(3) does not further the organization's cause, deed or activity consistent with the federal tax exempt application or other written purposes furnished to the Commission that are consistent with the organization's tax exemption.

(f) Reimbursement or direct payment for member or employee travel expenses. Reimbursement or direct payment for member or employee travel expenses will only be considered a cause, deed, or activity dedicated to the charitable purposes and consistent with the 26 U.S.C. §501 tax exemption of the organization or the purposes or objective for which the organization qualifies as an authorized organization if the following records are provided to the Commission upon request:

(1) the itinerary of the seminar, convention, or retreat showing that the purpose of the seminar, convention, or retreat was primarily to discuss the charitable functions and purposes consistent with the 26 U.S.C. §501 tax exemption of the organization or the purposes or objective for which the organization qualifies as an authorized organization; and

(2) the original receipts and cancelled checks, or true and correct copies of the same, showing the date and amount of the contribution for actual out-of-pocket reasonable and necessary expenses such as hotel, airline tickets, meals, etc. and the corresponding request for payment or reimbursement maintained by the organization.

§402.503. Bingo Gift Certificates.

(a) A bingo gift certificate may be sold, issued, or redeemed for bingo paper, pull-tab bingo or card-minding devices provided that the licensed authorized organization or unit, as defined in Occupations Code, §2001.431(1), maintains adequate records relating to the gift certificate as provided in this section.

(b) A licensed authorized organization's cost of printing the bingo gift certificate is an allowable bingo expense and shall be paid out of the bingo checking account. In order to maintain adequate records relating to gift certificates, all gift certificates shall be pre-numbered and consecutively issued.

(c) A bingo gift certificate may not be awarded as a prize for bingo unless the value of the certificate is paid for by the licensed authorized organization, recorded as a bingo prize on the daily schedule of prizes for the bingo occasion, and five percent of the value of the prize is withheld as a prize fee.

(d) A bingo gift certificate may not be awarded as a door prize unless the value of the certificate is paid for before it is awarded as a door prize and funds other than bingo proceeds are used to obtain the gift certificate.

(e) Each bingo gift certificate shall be:

(1) imprinted with the name and address of the licensed location(s) where the gift certificate may be redeemed for bingo paper, pull-tab bingo or card-minding devices;

(2) imprinted with the monetary value of the certificate;

(3) imprinted with the name of the licensed authorized organization(s) authorized to accept the bingo gift certificate at the licensed location;

(4) imprinted with the expiration date or a blank space for the licensed authorized organization or unit to fill in an expiration date; and

(5) paid for by the customer in full at the time it is issued by the licensed authorized organization or unit.

(f) A licensed authorized organization may not accept a gift certificate in exchange for bingo paper, pull-tab bingo or card-minding devices if the licensed authorized organization is not licensed to conduct bingo at the licensed location(s) imprinted on the gift certificate.

(g) Reporting Requirements:

(1) Funds from the sale of the gift certificate shall be maintained separately from the bingo funds. Such funds are not considered bingo funds until the gift certificate is redeemed for a bingo card, pull-tab bingo, or a card-minding device.

(2) Funds remaining from an expired or unredeemed gift certificate shall be disbursed equally among the participating licensed authorized organizations and deposited into each of their respective general fund accounts.

(3) When a gift certificate is redeemed, the sale of bingo paper, card-minding device, or pull-tab bingo shall be reported for that occasion. The gift certificate, when redeemed, shall be exchanged for cash from the gift certificate funds and deposited into the bingo account by the end of the next business day as required by Occupations Code, §2001.451.

(4) At the end of each month, the licensed authorized organizations collectively shall reconcile the gift certificates purchased, sold, expired, redeemed, or remaining during the month to the cash on hand.

(h) Records Retention. The purchase invoice or receipt from the printing of a gift certificate and the reconciliation documents relating to the sale or redemption of gift certificates must be maintained and available for inspection by the Commission for a period of four years.

(i) Gift Certificate Log. A gift certificate log shall be maintained collectively by the participating licensed authorized organizations at the location(s) and shall include the following for each gift certificate:

- (1) certificate number;
- (2) certificate value;
- (3) date of issue;
- (4) expiration date;
- (5) date of redemption; and
- (6) if awarded as a bingo or door prize, the date of the bingo occasion and the date the prize is awarded.

§402.504. Debit Card Transactions.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) ATM card--An automated teller machine card which allows the holder to withdraw money directly from the holder's bank account. An ATM card is ordinarily utilized in conjunction with a PIN selected by the holder.

(2) Check card--Another name for a debit card, a check card may display the logo of the banking institution where the funds supporting the card are held in account.

(3) Debit card--A card which may be used as a means of payment under arrangements which do not provide for the extension of credit to the cardholder. The use of a debit card results in a deduction of the transaction amount directly from the cardholder's bank account maintained at the authorizing banking institution. Debit cards come in two forms commonly known as ATM cards and check cards.

(4) PIN--A personal identification number which is used as a secure or protected password used in conjunction with a debit card. A PIN may sometimes be used as an electronic signature in transactions involving a debit card.

(5) PIN pad--Equipment which may be leased from a vendor and used to identify debit card holders by verifying the authorized PIN submitted during a debit card transaction.

(b) A debit card may be accepted only in place of United States currency or a check drawn on a funded bank account.

(c) Records.

(1) A debit card transaction sales receipt must be provided to the purchaser that uses a debit card to buy or use bingo paper/cards, electronic bingo devices or pull tabs. A copy of the debit card transaction sales receipt must be kept by the licensed authorized organization or Unit in order to substantiate compliance with the Bingo Enabling Act and the Charitable Bingo Administrative Rules.

(2) Each licensed authorized organization or unit which accepts payment by debit card must maintain records to substantiate:

(A) the timely deposit of funds derived from debit card transactions into the organization's or unit's bingo account; and

(B) the fees and expenses related to debit card transactions during the calendar quarter in which the debit card transactions occurred.

(3) All debit card transactions must be reported on the quarterly reports covering the time period in which the transactions occurred.

(4) All records relating to debit card transactions must be kept for four years.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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For further information, please call: (512) 344-5113



SUBCHAPTER F. PAYMENT OF TAXES, PRIZE FEES AND BONDS

16 TAC §§402.600 - 402.603

The new sections are proposed pursuant to Occupations Code, §2001.054, which authorizes the Commission to adopt rules necessary to enforce and administer the Bingo Enabling Act.

Occupations Code, Chapter 2001 is affected by the proposed new sections.

§402.600. Bingo Reports.

(a) On or before the 15th of the month prior to the end of the calendar quarter, the Commission will mail the "Texas Bingo Conductor's Quarterly Reports", "Texas Lessor Quarterly Reports", and "Manufacturer/Distributor Quarterly Reports and Supplements" to its licensees.

(b) Quarterly reports and payments due to be submitted on a date occurring on a Saturday, Sunday, or legal holiday will be due the next business day. The report will be deemed filed when deposited with the United States Postal Service or private mail service, postage or delivery charges paid and the postmark or shipping date indicated on the envelope is the date of filing.

(c) Quarterly Report for information relating to the conduct of bingo games.

(1) An authorized organization holding an annual license, temporary license, or a temporary authorization to conduct bingo must file on a form prescribed by the Commission or in an electronic format prescribed by the Commission a quarterly report for financial and statistical information relating to the conduct of bingo games. The report must be filed with the Commission on or before the 25th day of the month following the end of the calendar quarter even if there were no games conducted during that quarter.

(2) The report must be filed under oath attesting to the information being true and correct. Each officer and director is responsible for knowing the contents of the report. The person signing the report must promptly provide a copy of the report to such officer and director upon his/her request.

(d) Quarterly report for information relating to the lease of bingo premises.

(1) A commercial lessor holding a license to lease bingo premises must file on a form prescribed by the Commission or in an

electronic format prescribed by the Commission a quarterly report stating the rental income received. The report must be filed with the Commission on or before the 25th day of the month following the end of the calendar quarter regardless of whether income was received.

(2) The report must be filed under oath attesting to the information being true and correct. Each officer and director is responsible for knowing the contents of the report. The person signing the report must promptly provide a copy of the report to such officer and director upon his/her request.

(e) Quarterly report for information relating to a manufacturer or distributor license.

(1) A manufacturer or distributor shall file a report on a form prescribed by the Commission or in an electronic format prescribed by the Commission, reflecting each sale or lease of bingo equipment, and to the total sales of cards, sheets, pads and instant bingo to a person or organization in this state or for use in this state.

(2) The report shall be filed with regard to each calendar quarter and is due on or before the last day of the month following the end of the quarter. The report is due to the Commission regardless of whether sales or lease of bingo equipment occurred during the quarter.

(3) The report must be filed under oath attesting to the information being true and correct.

(f) A manufacturer or distributor shall use the eleven digit taxpayer numbers on file with the Commission when submitting information relating to the sale or lease of bingo equipment, sales of cards, sheets, pads and instant bingo. If six or more taxpayer numbers are incorrect on the report, the Commission will return the report to the manufacturer or distributor for correction. If five or less taxpayer numbers are incorrect, the Commission will notify the licensee in writing of the taxpayer numbers that were changed and the correct numbers to be used in the future.

(g) Quarterly report for information relating to a system service provider license.

(1) A system service provider shall file a report on a form prescribed by the Commission or in an electronic format prescribed by the Commission, reflecting each sale or lease of an automated bingo system to a person or organization in this state or for use in this state.

(2) The report shall be filed with regard to each calendar quarter and is due on or before the last day of the month following the end of the quarter. The report is due to the Commission regardless of whether a sale or lease of an automated bingo system occurred during the quarter.

(3) The report must be filed under oath attesting to the information being true and correct.

(h) A system service provider shall use the eleven digit taxpayer numbers on file with the Commission when submitting information relating to the sale or lease of an automated bingo system. If six or more taxpayer numbers are incorrect on the report, the Commission will return the report to the system provider for correction. If five or less taxpayer numbers are incorrect, the Commission will notify the licensee in writing of the taxpayer numbers that were changed and the correct numbers to be used in the future.

(i) Failure to receive forms. The failure of a licensee to receive forms from the Commission does not relieve the licensee from the requirement of filing reports and remitting prize fees or taxes as applicable on a timely basis.

(j) If a licensee fails to file a quarterly report as required by Occupations Code, §2001.504, the Charitable Bingo Operations Division will mail to the licensee a letter stating the quarterly report has not been filed. The applicable penalty and/or interest is due on the amount of prize fee or rental tax that was not filed timely. The licensee must file a report with the Commission even if no games were conducted or no rental tax collected.

(k) Incorrect calculation of "Texas Bingo Conductor's Quarterly Report". If the total receipts and total expenses do not total correctly, the Commission will mail the conductor a letter, with a copy of the adjusted report, stating an adjustment has been made to the quarterly report. If the adjusted quarterly report is correct, the licensee will maintain the copy in its file and no further action is required. If the licensee does not agree with the adjusted quarterly report, an amended quarterly report reflecting the correct data must be submitted to the Commission by the licensee.

(l) The Commission will deny a renewal application for a license to conduct bingo or a license to lease bingo premises or revoke a license to conduct bingo or a license to lease bingo premises if the licensee has failed to pay timely the prize fee or rental tax due three times within a 12 month period.

(m) Extensions.

(1) Filing extension because of natural disaster.

(A) The Director will grant to a licensee who has been identified as a victim of a natural disaster an extension of not more than 90 days to file a quarterly report or pay rental tax or prize fees provided the licensee has filed a timely request for an extension. In determining the natural disaster victims, the Commission shall recognize the counties that have been identified by the Comptroller of Public Accounts.

(B) The person owing the quarterly report, rental tax or prize fees must file a written request for an extension at any time before the expiration of five working days after the original due date in order to obtain an extension.

(C) If an extension under this paragraph is granted, interest on the unpaid rental tax or prize fee does not begin to accrue until the day after the day on which the extension expires, and rental tax, prize fees, and penalties are assessed and determined as though the last day of the extension were the original due date.

(2) Filing extension for reasons other than natural disaster.

(A) The Director may grant an extension of not more than 30 days for the filing of a quarterly report. Before a request for extension may be granted, a written request setting out the reasons or grounds for an extension and 90% of the prize fees or rental tax estimated to be due must be received by the Commission postmarked on or before the due date of the quarterly report.

(B) The granting of a request is within the discretion of the Director and the licensee will be notified in five working days of the request of the decision of the Director.

(C) If the request is denied, there will be no penalty assessed if the return is filed and remaining prize fee or rental tax is paid not later than ten days from the date of the denial of the request of the extension.

(3) A request postmarked after the due date for the filing of a request will not be considered.

§402.601. Interest on Delinquent Tax.

(a) Interest on Delinquent Tax.

(1) The yearly interest rate on delinquent prize fees or rental taxes is variable and is the prime rate plus one percent, as published in The Wall Street Journal on the first day of each calendar year that is not a Saturday, Sunday, or legal holiday.

(2) Delinquent taxes draw interest beginning 60 days after the date the taxes are due.

(b) Interest on Refund or Credit.

(1) Except as provided by paragraphs (1) and (2) of subsection (a), interest is at the rate set out in subsection (a)(1), for the amount found to be erroneously paid by the licensee for prize fee or rental tax for a period, as determined by the Charitable Bingo Operations Division,

(A) beginning on the later of 60 days after the date of payment or the date the quarterly report is required to be filed with the Charitable Bingo Operations Division; and

(B) ending on either the date of allowance of credit on account of the Charitable Bingo Operations Division's decision or audit or a date not more than ten days before the date of the refund warrant, as determined by the Charitable Bingo Operations Division.

(2) A credit of \$100.00 or less entered by a licensed authorized organization or lessor on its quarterly report does not accrue interest. The credit will be preprinted on the quarterly report reflecting the amount of the credit to be taken from the current quarter. A credit taken by a licensed authorized organization or lessor on the quarterly report does not accrue interest.

(3) For a refund processed for a tax or fee due, the rate of interest is the rate set out in subsection (a)(1) of this section.

(4) A warrant for interest payments shall be drawn against the fund or account into which the overpaid prize fee or rental tax was deposited.

§402.602. Waiver of Penalty, Settlement of Prize Fees, Rental Tax, Penalty and/or Interest.

(a) The Charitable Bingo Operations Director, for good cause shown, may waive a penalty if a licensee holding a license to conduct bingo or license to lease bingo premises exercised reasonable diligence to comply with Occupations Code, §2001.504. The Charitable Bingo Operations Division will not consider a request for a penalty or interest waiver until the principal related to the specific request is paid in full. To be considered, a written request stating the reason(s) penalty should be waived must be sent to the Charitable Bingo Operations Division within 14 days of the date the quarterly report and prize fees and rental taxes were due.

(1) The Charitable Bingo Operations Division will inform the licensee in writing within three days of the Charitable Bingo Operations Division's decision regarding the penalty waiver request after considering:

(A) Whether the licensee is current in the filing of all reports;

(B) Whether the licensee is current in the payment of all taxes or prize fees due for the last eight consecutive quarters;

(C) Whether a penalty has been waived within the last eight consecutive quarters;

(D) Whether the licensee has a good record of timely filing and paying past returns; and

(E) Whether the licensee has taken the necessary steps to correct the problem for future reporting.

(2) If a licensee has had a penalty waived within the last eight consecutive quarters, the current request will be denied.

(b) If a prize fee or rental tax is owed for an inactive account, the Charitable Bingo Operations Division will not consider a request for a penalty or interest waiver until the principal is paid in full.

(c) Settlement of rental tax, gross receipts tax, prize fee, penalty or interest on an inactive account. The Commission may settle a claim for rental tax, gross receipts tax, prize fee, penalty, or interest if the total cost of collection, as determined by the Commission, would exceed the total amount due.

§402.603. Bonds or Other Security.

(a) Who Must Post a Bond or Security.

(1) Manufacturer. Each application for a license to manufacturer bingo equipment or supplies must be accompanied by a cash bond or a bond issued by a surety company in the amount of \$10,000. A license will not be issued until the bond or security is received by the Commission.

(2) Commercial lessor. Each application for a license to lease bingo premises must be accompanied by a bond or other security. The Commission will determine the amount of bond or security sufficient to protect the state against failure to pay rental tax. In determining the amount of bond or security, the Commission will examine the four most recent quarterly tax reports filed by two licensed lessors in the same city or county that are similar in size and operations. The Commission will calculate an average gross rental tax based on the four most recent quarterly tax reports of these two licensed lessors. The amount of bond or security required to be posted by the applicant shall be three times the average gross rental tax calculated for the two lessors in the same city or county. A bond or security is not required for a lessor who does not collect rent from the organization(s) conducting bingo at the location identified in the application to lease bingo premises. Except as otherwise provided in this paragraph, a license will not be issued until the bond or security is received by the Commission.

(3) Conductor. Each application for an annual license to conduct bingo occasions must be accompanied by a bond or other security. The Commission will determine the amount of bond or security sufficient to protect the state against failure to pay prize fee. In determining the amount of bond or security, the Commission will examine the four most recent quarterly reports to determine prize fees paid by conductors licensed at the same playing location or, if no conductors are licensed at the same playing location, the Commission will examine the four most recent quarterly reports to determine prize fees paid by two conductors in the same city or county that are similar in size and operations. The Commission will calculate an average prize fee based on the four most recent quarterly tax reports of these two identified conductors. The amount of bond or security required to be posted by the applicant shall be three times the average prize fee calculated for the two identified conductors either in the same playing location or the same city or county, as applicable. A license will not be issued until the bond or security is received by the Commission.

(b) Type of security or bonds.

(1) Cash or check made payable to the state comptroller. Cash security does not earn interest for the licensee.

(2) Irrevocable assignments of either a savings account or a certificate of deposit in an institution insured by an agency of the United States government. This security must be irrevocable and must be executed on an assignment form approved by the Commission.

(c) Surety bond must be executed on a form approved by the Commission and can be issued only by a surety company chartered or

authorized to do business in the State of Texas. The bond shall constitute a new and separate obligation in the penal sum named in the bond for each calendar year or a portion of the year while the bond is in force. The bond must be executed by an attorney-in-fact appointed by the surety. The appointing instrument must be properly notarized and physically attached to the bond.

(d) Bond Cancellation by Surety Company. If a surety company notifies the Commission in writing that it has withdrawn as surety issued on behalf of a licensee as security for prize fee or rental tax, the Commission shall notify the licensee in writing that it must post a new bond to maintain its license. Failure to submit a new bond within 20 days of such notice is grounds for denial of an application for renewal of license or revocation of the license.

(e) Increase in the Amount of Bond or Security. The Commission may increase the amount of the bond or security at the time a jeopardy determination becomes final or when a conductor or lessor is renewing its license if the existing bond or security does not cover three times the licensee's average quarterly prize fee or rental tax liability. The licensee's average quarterly prize fee or rental tax is calculated using the four most recent consecutive quarters. The Commission shall notify the licensee in writing of the increase. Failure to submit the increased amount of bond within 20 days of such notice is grounds for denial of an application for renewal of license or revocation of the license.

(f) Forfeiture. If a licensee pays less than the total amount of prize fee or rental tax due, the Commission shall notify both the licensee and surety company of the delinquency via the "Texas Notice of Tax/Prize Fee Due" for the quarter in which the liability exists. If payment is not made by the licensee by the demand date stated in the notice, the Commission will forfeit the bond or security or any part of the bond or security necessary to pay the proper amount of prize fee or rental tax liability due. Failure to pay any prize fee or rental tax when due is grounds for denial of an application for renewal license or revocation of the license. If the bond is forfeited and a new or additional bond has been submitted to replace the forfeited bond, the new or additional bond will not be released until the license no longer exists.

(g) Release of Bond or Security. If the licensee has filed all required returns, has no outstanding prize fee, rental tax, penalty or interest due and has completed eight consecutive quarters without a jeopardy determination becoming final, the bond or security will be released at the time the licensee next renews its license. If the licensee ceases to conduct bingo or to lease bingo premises and relinquishes its license or if the license is denied or revoked by the Commission for any reason, the Commission will release any bond or security if the Commission determines that no amount of prize fee, rental tax, penalty, or interest remains due and payable and all quarterly reports due have been filed with the Commission. The Commission will notify the licensee in writing that the bond or security has been released. A manufacturer's bond will be released at the time the Commission is notified by certified mail that the manufacture will no longer be licensed in Texas.

(h) Reinstatement of Bond or Security. If a jeopardy determination becomes final for rental tax or prize fee, the Commission will notify the licensee that a bond or security will be required. The amount of bond or security shall be three times the average rental tax or prize fee due for the quarter in which the determination became final plus the previous three quarters. The Commission will use the four most recent consecutive quarters to determine an average amount due and will multiply the average by three to arrive at the amount of bond or security required.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER G. COMPLIANCE AND EQUIPMENT

16 TAC §§402.700 - 402.704

The new sections are proposed pursuant to Occupations Code, §2001.054, which authorizes the Commission to adopt rules necessary to enforce and administer the Bingo Enabling Act.

Occupations Code, Chapter 2001 is affected by the proposed new sections.

§402.700. Denials; Suspensions; Revocations; Hearings.

(a) Denial of application. If the Director of the Charitable Bingo Operations Division determines that an applicant is not eligible for a license on statutory or regulatory grounds, or that the license should be denied on statutory or regulatory grounds which would justify suspension or revocation of an existing license, he/she will notify the applicant in writing that the application has been denied and will state such grounds for the denial. If the applicant desires to contest the denial, the applicant must, within 30 days of the date of the notice of denial, make a written request for a hearing to contest the denial.

(b) Suspension and revocation.

(1) Grounds. The Commission may suspend or revoke a license or temporary authorization in accordance with the Bingo Enabling Act, §2001.355. If the Commission proposes to revoke or suspend a license it will notify the licensee in writing and will state the grounds for the proposed action.

(2) Summary suspension. Grounds for summary suspension of licenses, provisions for service of notice to licensees and show-cause hearings, and the time period for requesting final hearings on suspension or revocation of licenses, and other related matters are contained in the Bingo Enabling Act.

(c) Hearings.

(1) All hearings will be conducted in accordance with the relevant portions of Title 16, Part 9, Chapter 401, Subchapter C.

(2) After a hearing on the alleged violation and upon finding that a violation did occur, the Commission may suspend a license or temporary authorization for a period not to exceed one year or may revoke a license or temporary authorization. The period of a suspension begins on the date of the order invoking the suspension, or the date of the order overruling the motion for rehearing, if one was filed.

(3) In the event a licensee has requested an administrative hearing, and has made timely and sufficient application for renewal of its license, the licensee may be issued a temporary authorization to conduct bingo and continue to act pursuant to said authorization until the Commission issues a final decision, regardless of whether said license has expired during the hearing process.

(d) Reapplication. No person or organization whose license has been revoked or forfeited, or whose application has been denied for reasons which would justify a revocation of an existing license will be eligible to apply for another license earlier than one year from the date of forfeiture, revocation, or denial.

§402.701. Investigation of Applicants for Licenses.

(a) Each person required to be named in an application for a license under the Bingo Enabling Act is subject to a criminal history record inquiry.

(b) Each person required to be named in an application for any license under the Bingo Enabling Act shall promptly furnish all information requested by the Commission to obtain criminal history record information from the Texas Department of Public Safety, Federal Bureau of Investigation, or other law enforcement agency. Falsification or nondisclosure of requested information shall result in the denial, revocation, or suspension of a license under the Bingo Enabling Act.

(c) The existence of a disqualifying conviction on records obtained by the Commission is prima facie evidence of disqualification. The burden of proof is on the applicant to show otherwise.

§402.702. Location Verification Inspection.

(a) Purpose. The purpose of the location verification inspection is to verify that the location requirements for a conductor, lessor, distributor, manufacturer, and system service provider license are in compliance with the Bingo Enabling Act.

(1) Conductor Location Verification Inspection. An organization applying for a license to conduct bingo or changing its principal business location is subject to an on-site verification inspection. This inspection is to provide assistance to the applicant or licensee with the licensing process and to review the applicant or licensee's business records. The Commission may visit the location identified as the Primary Business office on the application to verify the following:

(A) The location listed is where the applicant or licensee is primarily conducting business;

(B) The location listed is where the applicant or licensee's records relating to its primary purpose are maintained in the ordinary course of business; and

(C) The county listed is the county in which the applicant or licensee is principally located. During the site verification inspection, the Commission may obtain items or information missing from the application that have been previously requested by the Commission. A pre-licensing interview is held with every applicant filing an original license application. The interview may be conducted at the organization's next scheduled general meeting.

(2) Lessor Location Verification Inspection. A person or organization applying for a lessor license or amending its license to move to another playing location is subject to an on-site verification inspection. This inspection is to provide assistance to the applicant or licensee with the licensing process and review the applicant or licensee's business records. The Commission may visit the location identified on the application as the playing location to verify the following:

(A) The county listed is the county in which the proposed activity is located;

(B) The proposed bingo premises is located at the "Lessor Location Address" as stated on the license application;

(C) Whether a bingo license has been issued for that location;

(D) No more than one bingo premises exists under a common roof or over a common foundation.

(3) Manufacturer, Distributor, and System Service Provider Location Verification Inspections. A person applying for a manufacturer, distributor, or system service provider license is subject to an on-site verification inspection. This inspection is to provide assistance to the applicant or licensee with the licensing process and review the applicant or licensee's business records. A manufacturer, distributor, or system service provider location verification inspection will be conducted for the following situations:

(A) Newly licensed manufacturer, distributor, or system service provider; or

(B) New location of a currently licensed manufacturer, distributor, or system service provider.

(b) Notification. The Commission may contact the applicant to arrange to meet and conduct the inspection. An operator or business contact listed on the records with the Commission must attend the location verification inspection.

§402.703. Books and Records Inspection.

(a) Purpose. The books and records inspection is an education-based review designed to train a licensee in the proper method of establishing and maintaining bingo related accounting records. The books and records inspection will be conducted by the Commission within six months of issuance of the original license or as otherwise necessary. The books and records inspection will be conducted at a time other than a bingo occasion. However, the auditor may observe an occasion as deemed necessary.

(b) Scope. The scope of a books and records inspection shall cover a minimum of one calendar quarter. A books and records inspection will be conducted in accordance with the procedures contained in the Charitable Bingo Operations Division Audit Reference and Procedures Manual.

(c) Notification. The Commission will notify in writing the licensee's operator or business contact of the books and records inspection. An operator or business contact must attend the books and records inspection. In addition, any person with knowledge of the operation and record keeping practices may accompany the operator or business contact.

(d) Inspection. The books and records to be reviewed or examined will include those records that relate to the operation of bingo and the licensee's charitable distributions. The books and records inspection is a limited examination of the licensee's records and is not intended to replace an audit conducted in accordance with §402.500 of this chapter.

(e) Inspection Results. At the conclusion of the books and records inspection, the auditor will communicate any compliance issues noted during the inspection and make recommendations to the operator, business contact or any person with knowledge of the operation and recordkeeping practices of the licensee. The auditor will request the operator or business contact to sign a form stating that he or she understands the findings, if any. If the operator or business contact refuses to sign the form, the auditor will indicate the refusal on the form. The auditor will provide the operator or business contact with a copy of the form. If the books and records inspection reveals numerous or serious compliance issues, the Commission may undertake further reviews of the licensee's records as appropriate.

§402.704. Tax Review Inspection.

(a) Purpose. The tax review inspection is to obtain delinquent quarterly reports and/or delinquent fees or taxes owed to the State, determine the reason(s) for the licensee's failure to submit timely the quarterly reports and/or fees or taxes, and inform the organization's

representative(s) of the requirements of provisions of the Bingo Enabling Act and the Charitable Bingo Administrative Rules relating to the filing of quarterly reports and the payment of taxes and fees.

(b) Tax Review. A tax review inspection is performed for the following reasons:

(1) A licensee failed to file a quarterly report. A licensee that fails to file a quarterly report three times in a 12 month period is subject to disciplinary action under §402.600(1) of this chapter.

(2) A licensee received a "Notice of Prize Fee or Taxes Due" indicating unpaid prize fees, rental taxes, penalties, or interest are delinquent because they were not timely remitted to the Commission;

(3) A licensee failed to pay the full amount of prize fees, rental tax, penalties, or interest due.

(c) Contact. The Commission will contact the primary operator or business contact to request records, quarterly report(s), and/or delinquent taxes or fees. The Commission may arrange a meeting with the primary operator or business contact to obtain the records, quarterly report(s), and/or delinquent taxes or fees.

(1) The auditor will review the delinquent Quarterly Report(s) and the check or money order for accuracy.

(2) The auditor will inform the primary operator or business contact of the violation(s) and corrective action required and issue a "Charitable Bingo Audit Violations" form, documenting the specific violation(s) of the Bingo Enabling Act. The auditor will give the operator or the organization's representative a copy of the form and the original receipt of payment, if applicable.

(d) Further examination. Based on the outcome of the tax review inspection, a more detailed examination of the records may be required.

§402.705. Compliance Review.

(a) General Provisions. A compliance review is conducted to determine if a licensee's records are in compliance with the Bingo Enabling Act and this chapter. The compliance review process may be initiated by, but is not limited to, any of the following:

(1) a request by Charitable Bingo Operations Division management;

(2) a request by another division of the Commission;

(3) a request by Commission bingo auditors based on compliance violations noted in a previous inspection or game observation, or

(4) by random selection process based on the risk assessment performed by the Charitable Bingo Operations Division.

(b) Scope. The scope of the compliance review is initially limited to the calendar quarter associated with the request for the compliance review or the risk assessment. The scope of the review may be expanded to cover additional calendar quarters if the records warrant. The compliance reviews will be conducted in accordance with the procedures contained in the Charitable Bingo Operations Division Audit Reference and Procedures Manual.

(c) Notification. Notice of the compliance review will be provided in accordance with the provisions of §402.500 of this chapter.

(d) Entrance Conference. The entrance conference will be conducted in accordance with the provisions of §402.500 of this chapter.

(e) Fieldwork.

(1) A compliance review may include an examination of the licensee's bingo expenses, receipts, and charitable distributions to determine whether the distributions were consistent with the donor licensee's stated charitable purpose, the Bingo Enabling Act, and the Charitable Bingo Administrative Rules, as necessary.

(2) If the auditor determines a more detailed examination of records is necessary, the compliance review will be concluded, and a report will be prepared with the auditor's recommendation that an audit be conducted in accordance with §402.500 of this chapter.

(f) Exit Conference. An exit conference will be conducted in accordance with the provisions of §402.500 of this chapter.

(g) Resolution. A resolution resulting from the compliance review process will be conducted in accordance with the provisions of §402.500 of this chapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

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For further information, please call: (512) 344-5113



CHAPTER 402. BINGO REGULATION AND TAX

16 TAC §§402.520, 402.530, 402.531, 402.535, 402.540 - 402.550, 402.554 - 402.556, 402.558, 402.567, 402.568, 402.571, 402.573, 402.580 - 402.584, 402.590 - 402.592, 402.595, 402.596, 402.598, 402.601, 402.602

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Lottery Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

Texas Lottery Commission (Commission) proposes the repeal of Title 16, Part 9, Chapter 402, §§402.520, 402.530, 402.531, 402.535, 402.540 - 402.550, 402.554 - 402.556, 402.558, 402.567, 402.568, 402.571, 402.573, 402.580 - 402.584, 402.590 - 402.592, 402.595, 402.596, 402.598, 402.601, and 402.602, concerning Bingo Regulation and Tax. By separate action, the Commission will publish proposed new Chapter 402 which will make nonsubstantive changes, including: (1) renaming Chapter 402 the "Charitable Bingo Administrative Rules;" (2) reorganizing Chapter 402 into subchapters; (3) updating legal citations; and (4) deleting references to obsolete dates.

Lee Deviney, Financial Administration Director, has determined there will be no significant fiscal impact for state or local government as a result of the repeal of Chapter 402 and proposed new Chapter 402. Any costs to the State could be absorbed by current resources. For each year of the first five years the repeal and subsequent new Chapter 402 is in effect, the fiscal impact is the following: FY 05, \$0; FY 06, \$0; FY 07, \$0; FY 08, \$0; FY 09, \$0. Additionally, there will be no effect on individuals, small businesses, micro businesses or local or state employment.

William L. Atkins, Director, Charitable Bingo Operations Division, has determined that for each of the first five years the repeal and subsequent new Chapter 402 as proposed is in effect, the public will benefit from the adoption.

Comments on the proposed repeal of Title 16, Part 9, Chapter 402 may be submitted to Sandra Joseph, Assistant General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630. The Commission will hold a public hearing on this proposal at 10:00 a.m. on February 3, 2005. Comments must be received within 30 days after publication of this proposed repeal in order to be considered.

The repeal is proposed pursuant to Occupations Code, §2001.054, which authorizes the Commission to adopt rules necessary to enforce and administer the Bingo Enabling Act.

Occupations Code, Chapter 2001 is affected by the proposed repeal.

- §402.520. Temporary License.*
- §402.530. Registry of Approved Bingo Workers.*
- §402.531. Advisory Opinions.*
- §402.535. Debit Card Transactions.*
- §402.540. General Licensing Provisions.*
- §402.541. Definitions.*
- §402.542. Investigation of Applicants for Licenses.*
- §402.543. Denials; Suspensions; Revocations; Hearings.*
- §402.544. License Fees.*
- §402.545. Licenses for Conduct of Bingo Occasions and to Lease Bingo Premises.*
- §402.546. Temporary Authorization.*
- §402.547. Prohibited Bingo Occasion.*
- §402.548. General Restrictions on the Conduct of Bingo.*
- §402.549. Exemptions from Licensing Requirements.*
- §402.550. Training Program.*
- §402.554. Pull-Tab Bingo.*
- §402.555. Card-Minding Systems.*
- §402.556. Pull-tab or Instant Bingo Dispensers.*
- §402.558. Bingo Card/Paper.*
- §402.567. Bingo Advisory Committee.*
- §402.568. Distribution of Proceeds for Charitable Purposes.*
- §402.571. System Service Provider.*
- §402.573. Bingo Gift Certificates.*
- §402.580. Bingo Reports.*
- §402.581. Interest on Delinquent Tax.*
- §402.582. Waiver of Penalty, Settlement of Prize Fees, Rental Tax, Penalty and/or Interest.*
- §402.583. Bonds or Other Security.*
- §402.584. Transfer of Funds.*
- §402.590. General Audit Rule.*
- §402.591. Location Verification Inspection.*
- §402.592. Books and Records Inspection.*
- §402.595. Tax Review Inspection.*
- §402.596. Compliance Review.*
- §402.598. Charitable Use of Proceeds.*
- §402.601. Unit Manager.*
- §402.602. Unit Accounting.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 176. DRIVER TRAINING SCHOOLS SUBCHAPTER AA. COMMISSIONER'S RULES ON MINIMUM STANDARDS FOR OPERATION OF LICENSED TEXAS DRIVER EDUCATION SCHOOLS

19 TAC §§176.1001 - 176.1019

The Texas Education Agency (TEA) proposes amendments to §§176.1001 - 176.1019, concerning driver training schools. The sections establish minimum standards for operation of licensed Texas driver education schools. The proposed amendments would remove provisions found to have limited or no statutory authority and reflect the codification of Vernon's Texas Civil Statutes, Article 4413(29c), titled the Texas Driver and Traffic Safety Education Act, into the Texas Education Code (TEC), Chapter 1001.

Texas Civil Statutes, Article 4413(29c), the Texas Driver and Traffic Safety Education Act, was codified by the 78th Texas Legislature, 2003, as Texas Education Code, Title 5, Chapter 1001. Also during 2003, there was a major reorganization of state government with a view toward streamlining regulatory processes and other governmental functions. In the course of reviewing aspects of the codification, it became apparent that a revision of 19 TAC Chapter 176 was necessary. Currently, rules in this chapter are organized in the following subchapters: Subchapter AA, Commissioner's Rules on Minimum Standards for Operation of Licensed Texas Driver Education Schools; Subchapter BB, Commissioner's Rules on Minimum Standards for Operation of Licensed Texas Driving Safety Schools and Course Providers; Subchapter CC, Commissioner's Rules on Minimum Standards for Operation of Texas Drug and Alcohol Driving Awareness Programs; and Subchapter DD, Commissioner's Rules on Hearings Held Under the Texas Driver and Traffic Safety Education Act. Revisions are proposed for rules in Subchapters AA, BB, and DD.

Comments from the driver training industry, consumers, legislators, and other stakeholders contributed to the proposed revision of 19 TAC Chapter 176. New definitions were proposed to both Subchapters AA and BB to assist all parties in completely understanding certain terms used in the rules. In Subchapters AA, BB, and DD, references to Texas Civil Statutes, Article 4413(29c), would be replaced with corresponding references to the Texas Education Code, Chapter 1001. A few references were not codified and those unchanged references would now show the suffix "(Vernon's 2001)" to refer the reader to the prior version of the law. The decision not to codify non-operative language does not mean that the rule is no longer justified. Editorial changes would

be made to standardize language or correct grammar have been made throughout Subchapters AA and BB. These edits include changing reference to the division rather than the division director, as applicable, for clarification and changing reference to a driver's license rather than a driver license for consistency. Changes in Subchapter DD include clarification of timeline requirements.

In order to correct references to newly codified statutory authority and to clarify and modify existing rule language, the following amendments to 19 TAC Chapter 176, Subchapter AA, are proposed.

The amendment to 19 TAC §176.1001 would add a new paragraph (6) to define "Contract site," a new paragraph (8) to define "Deferred adjudication," and a new paragraph (11) to define "Educational objectives."

The amendment would also renumber existing paragraphs accordingly. Renumbered paragraph (14) would be modified to update the definition of "Primary school." Paragraphs (11) and (13), the definitions for "New course" and "Public or private school," respectively, would be removed.

The amendment to renumbered 19 TAC §176.1001(12)(A) would amend language to broaden the scope of prior felony convictions to be considered. In subparagraph (C) the length of time for consideration would be shortened from ten years to seven. In subparagraph (D) unnecessary language would be removed. In subparagraph (D) new language would be added to set the ground rules to allow the division to consider prior similar violations. Subparagraph (E) would be modified to correct grammar in defining good reputation. New subparagraph (G) would be added to address applicants who have received deferred adjudication in prior criminal cases.

The amendment to 19 TAC §176.1002(a) would correct a statutory citation.

The amendment to 19 TAC §176.1003 would modify subsection (c)(1) to reflect the source of the decision and subsection (d) to make changes to the wording to clarify the date that a license becomes effective. The amendment would also modify subsection (e)(1) to include partnerships and corporations as ownership entities, subsection (e)(3) to correct grammar, subsection (f)(1) to change the timeline for reporting a change of address, subsection (f)(2) to remove unnecessary requirements, subsection (f)(3) to change the refund for students who are prevented from completion to a pro-rata refund, and subsection (f)(4) to require a school to maintain a current e-mail address, if applicable. In addition, the amendment would modify subsection (g) to add paragraphs (5) and (6) as items required for renewal and previous paragraph (5) would be renumbered to (7). In addition, subsection (i) would be modified to correct language, subsection (j)(1) would be revised to modify requirements related to school closures, subsection (j)(2) would be amended to clarify when the division may declare a school closed, subsection (j)(3) would change the student refund to pro-rata in school closure situations, subsection (k) would use the newly defined "contract site" language, and subsection (l) would be deleted.

The amendment to 19 TAC §176.1004 would delete language in subsection (a) for clarification. In subsection (b), paragraphs (2) and (8) would be deleted and paragraphs (3) through (7) would be renumbered. Subsection (c) would be modified to correct a statutory citation.

The amendment to 19 TAC §176.1005 would change subsection (a)(2) to delete subparagraph (A), shorten the required experience/educational requirement in subparagraph (B), and remove the experience requirement in subparagraph (C) as well as renumber those items. This amendment would also modify subsection (b) to allow a school director, assistant director, or school owner to determine duties of an administrative staff member and delete paragraphs (1) and (2). Subsections (c) and (d) would be modified to make corresponding corrections.

The amendment to 19 TAC §176.1006 would modify subsection (a)(3) to clarify the driver's license requirement and subsection (b)(3) to change division director to division. Subsection (b)(4) would be deleted. The amendment would also revise subsections (c)(1)(A)(i) and (ii) and (c)(2)(A)(i) and (ii) to clarify the types of testing and certification required. The changes in subsection (c)(3)(A)(iii) and (c)(4)(A)(i) and (iii) would clarify licensing requirements. The changes in subsection (c)(4)(B) would allow a teaching assistant (full) to assist in the classroom phase of driver education and require a driver education teacher or supervising teacher to endorse all instruction provided by the teaching assistant (full) or allow the school to endorse the records in emergency situations. The amendment would delete subsection (c)(4)(B)(i) through (iii) and amend language in (c)(5)(A)(i). The amendment would modify subsection (c)(5)(B) to restrict the allowed activities to in-car instruction, delete subsection (c)(6), and replace language in subsection (d) to clarify the renewal process.

The amendment to 19 TAC §176.1006 would also modify subsection (e)(1)(D) to remove the requirement for director approval of certain continuing education programs, subsection (e)(1)(E) to add specialized driving safety courses and drug and alcohol driving awareness programs to acceptable continuing education courses, subsection (e)(3) to add a time limit for completion of the same continuing education course, and subsection (e)(5) to clarify the type of continuing education credit allowed. The amendment would change subsection (f) to clarify educational background evidence that does not have to be resubmitted for reapplication after a license has expired; subsection (g)(2) to remove unnecessary language; and subsection (j) to remove the reference to a subsection, broadening the types of documents required. The amendment would delete subsections (k) and (n), renumber subsequent subsections, and modify renumbered subsection (m)(1)(A) and (m)(4) to correct statutory citations. In addition, language in subsection (m), formerly subsection (o)(7), would be moved as part of the definition found in 19 TAC §176.1001(12)(G).

The amendment to 19 TAC §176.1007 would revise subsection (b)(1)(B) to clarify driver education curricula language and add the requirement that the curricula cover the dangers of locking children in vehicles unattended and distractions while driving. The revision to this subsection (b) would also delete all references to the ten-module curriculum that forms the basis for the Program of Instruction for Driver Education and Traffic Safety. In subsection (b)(1), clarification would be provided in the following subparagraphs: (C) enrollment procedures, (D) the sequence of instruction, (E) instructor qualifications and availability, (F) instructional resources, (H) access to instructional materials, (I) requirement for a copy of the Texas Driver Handbook, and (J) requirement for seating for all students. Further modifications in subsection (b)(1) include those in subparagraph (K) to remove unnecessary language, subparagraph (L) to include completion of make-up work, subparagraph (M) to delete language to simplify terms and language describing a school's responsibility,

subparagraph (O) to reference the division rather than the director, subparagraph (P) to delete unnecessary language defining simulators, subparagraph (Q) to add language to clarify the requirement for seven hours of in-car observation, subparagraph (R) to clarify the block program and concurrent program, and subparagraph (U) to correct a statutory citation.

The amendment to 19 TAC §176.1007 would also revise subsection (b)(2)(A) to clarify the definition of adult driver education. The amendment would modify subsection (b)(2)(B) in clause (i) to clarify the minimum course content language while clause (ii)(I) would provide language to allow a teaching assistant (full) to provide classroom instruction and require an instructor to be in appropriate proximity to the student. Also in clause (ii), subclause (II) would allow study material equivalent to the Texas Driver Handbook and subclauses (III) through (V) inclusive would be deleted. The amendment would modify subsection (c)(5) to remove the requirement that instructor development courses be taught at a licensed driver education school and replace the term "self-study" with more explicit language. The amendment would change subsection (d) by revising paragraph (1) to reduce the required number of hours for a continuing education class from six to four and paragraph (5) to remove the requirement to notify the division ten days prior to a continuing education class presentation. In subsection (g), the amendment would lengthen the time for reporting when a course is discontinued from 72 hours to five days. In subsection (i), paragraphs (1) through (3) would be modified by grammatical changes to clarify language, paragraph (4) to correct a statutory citation, and paragraph (5) would be deleted.

The amendment to 19 TAC §176.1008 would revise subsection (a) for clarity. In subsection (b), revisions in paragraph (1) would remove the requirement for social security numbers on student contracts, in paragraph (12) would remove the requirement of a parent to initial completion dates on the contract, and in paragraph (19)(A) would add the word "or" to clarify that any of the three documents suffice as evidence. The amendment would also revise subsection (d) to change the requirement for delivery of the original contract and subsection (f) to remove the requirement that proposed or amended contracts be approved prior to use.

The amendment to 19 TAC §176.1009 would modify paragraph (1) to correct terms and paragraph (2) to allow multiple procedures for ensuring student mastery. Paragraphs (4) and (6) would be deleted and paragraph (5) would be renumbered.

The amendment to 19 TAC §176.1010 would modify subsection (a) to clarify the requirement for attendance and attendance records; subsection (b) to delete language that was added to subsection (a); and subsection (c) to increase the number of hours of driver education training allowed from four to five per day. Also in subsection (c), paragraphs (1)-(3) would be deleted and paragraphs (4) and (5) would be renumbered. New paragraph (4) would reflect new language that allows combining instruction methods. The proposal would add new subsection (d) which would limit certain behind-the-wheel instruction and reorder the remaining subsections. The proposal would also modify renumbered subsection (e) to increase the amount of time from 25% of the 32 hour total (8 hours) to ten hours that a driver education student can be absent from class and later make up and subsection (g) to delete unnecessary language and add a ten-hour ceiling to make up assignments outside of class. The amendment would modify subsection (g) in paragraph (1) to add

language to allow make-up work on the same date as the absence and in paragraph (2) to clarify language concerning documentation of take-home make-up work. In addition, renumbered subsection (h) would be revised to clarify grammar and the previous subsection (h) would be deleted.

The amendment to 19 TAC §176.1011 would delete subsection (a) and require that the conduct policy must be delivered to the parent or guardian signing the contract. Paragraph (2) would be revised to remove language for clarity.

The amendment to 19 TAC §176.1012 would modify subsections (a), (c), (d), and (e) to correct the statutory citations. The modification in subsection (c) would set the interest rate on unpaid refunds at 250%. The modification in subsection (e)(1) would delete the requirement to list student social security numbers.

The amendment to 19 TAC §176.1013 would include deleting subsections (a) and (b) and renumbering the subsequent subsections. New subsection (a) would clarify what facilities may be used. New subsection (b) would restate the language to clarify that no driver education instruction may be located in a private residence. New subsection (c) would require writing facilities for students and new subsection (d) would make a grammar correction.

The amendment to 19 TAC §176.1014 would revise subsection (a) by adding a new paragraph (6) which would require vehicles to be able to pass state inspection at the time of use; current paragraphs (6) and (7) would be deleted. The amendment would modify subsection (b) to require the submission of a current list of motor vehicles used for instruction. Subsection (d) would be modified to add language that includes unsafe vehicles as defined in the subsection to violations that may result in a civil penalty. The proposal would delete subsection (e) and renumber the following subsection.

The amendment to 19 TAC §176.1015 would remove the requirement for division approval of grievance procedures and add language clarifying student record maintenance and availability. Subsection (b) would be deleted.

The amendment to 19 TAC §176.1016 would add language to subsection (a) to add language requiring schools to accurately complete all school records and applications. Modifications would be made in subsection (b) to clarify where and for how long school records must be maintained. Subsection (c) would be deleted and replaced by applicable current provisions that would be revised and refined to clarify what daily records must be maintained for each student. The new subsection (c) would include new paragraph (1) that would specify required legend entries, paragraph (2) for items in the classroom individual student record form, paragraph (3) for items in the in-car individual student record form, and paragraph (4) regarding retention of the DE-964. Subsection (e) would be deleted.

The amendment to 19 TAC §176.1017 would modify subsection (a) to add language to include names of licensed course providers or approved driving safety courses to those names that may not be adopted or used and add driving safety school or course provider to the licenses that cannot be the same or deceptively similar as an already licensed name. Subsection (b) would be simplified by deleting unnecessary language. Subsection (f) would be updated to add civil penalty to the sanctions that may be invoked. Subsections (g) and (h) would be deleted.

The amendment to 19 TAC §176.1018 would modify subsection (a) to replace language with the new term "contract sites." A

change in subsection (b)(1) would clarify language on ordering DE-964 forms, and in subsection (b)(3) would add language to require that copies of DE-964s must be submitted at least once every 90 days. The revision in subsection (b)(4) would clarify language regarding the DE-964 and in subsection (b)(5) would change the reporting period from two days to five days, and remove language that limited the types of missing DE-964s covered. Subsection (c) would be deleted and the following subsection renumbered.

The amendment to 19 TAC §176.1019 would modify subsections (a), (c), and (e) to correct the statutory citations. The change in subsection (b) would reword the language that sets the time limit for late fees and in subsection (d)(8) would add assistant director to the fee list.

Ernest Zamora, associate commissioner for support services and school finance, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Dr. Zamora has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments would be a net reduction in regulatory requirements for industry members while maintaining a curriculum in driver education programs that meet the intent of legislative mandates. There will be an effect on small businesses as a result of the proposed amendments in 19 TAC Chapter 176, Subchapter AA. The estimated savings during fiscal years 2005-2009 for small businesses operating within the industry total \$1,704,500. Relative costs for small and large businesses will be the same. The cost or savings involved are the same per unit, regardless of business size, but the net result will vary depending on business size and volume. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed.

The estimated fiscal impact for businesses during fiscal years 2005-2009 is derived as follows:

Driver education school would no longer be required to evaluate all teaching assistants each year and maintain the evaluations as part of the personnel file (19 TAC §176.1004(b)(8) removal). The estimated savings for driver education schools is \$20 per teaching assistant. There are approximately 1,000 teaching assistants licensed in Texas. This would generate an estimated savings of \$20,000 per fiscal year.

Allowing teaching assistants-full to provide classroom instruction under supervision would result in payroll cost savings for all 250+ driver education schools in Texas (19 TAC §176.1006(c)(4)(B) amendment). The average savings is estimated at \$1,200 per school per year, for a total savings of approximately \$307,200 per fiscal year.

The addition of various new curriculum requirements, including the dangers of locking and leaving children in vehicles, distracted driving, and aggressive driving (19 TAC §176.1007(b)(1)(B) amendment) would add costs. Driver education schools must bear the cost of revising curriculum and passing this information on to all their instructors. The estimated cost is \$250 for each of the 256 driver education schools, for total of \$64,000 during the first year.

The reduction in the amount of continuing education training from six to four hours (19 TAC §176.1007(d) amendment) would reduce costs. There are approximately 1,600 licensed instructors

in Texas who must attend this training. The average cost to the driver education school for this training is \$50 per instructor. Reducing this cost by one-third would result in estimated savings to driver education schools of \$26,500 per fiscal year.

Comments on the proposed rules may be submitted to Cristina De La Fuente-Valadez, Policy Coordination, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028.

The amendments are proposed under the Texas Education Code, §1001.053, which authorizes the commissioner of education to adopt and enforce rules necessary to administer driver and traffic safety education and to ensure the integrity of approved driving safety courses and to enhance program quality.

The amendments implement the Texas Education Code, §1001.051 and §1001.153.

§176.1001. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Advertising--Any affirmative act, whether written or oral, designed to call public attention to a school and/or course in order to evoke a desire to patronize that school and/or course.

(2) Branch school--A licensed driver education school that has the same ownership and name as a licensed primary driver education school.

(3) Break--An interruption in a course of instruction occurring after the lesson introduction and before the lesson summation.

(4) Change of ownership of a school--A change in the control of the school. Any agreement to transfer the control of a school is considered to be a change of ownership. The control of a school is considered to have changed:

(A) in the case of ownership by an individual, when more than 50% of the school has been sold or transferred;

(B) in the case of ownership by a partnership or a corporation, when more than 50% of the school or of the owning partnership or corporation has been sold or transferred; or

(C) when the board of directors, officers, shareholders, or similar governing body has been changed to such an extent as to significantly alter the management and control of the school.

(5) Chief school official--The owner, director, assistant director, or assigned liaison of a licensed driver education school.

(6) Contract site--An accredited public or private secondary school approved as a location for a driver education course of a licensed school.

(7) ~~[(6)]~~ DE-964--The driver education certificate of completion used for certifying completion of an approved driver education course. This term encompasses all parts of a certificate of completion with the same control number issued for an approved driver education course. It is a government record.

(8) Deferred adjudication--An order by a court deferring action on a criminal matter pending the successful completion of terms imposed by that court.

(9) ~~[(7)]~~ Division--The division of the Texas Education Agency (TEA) responsible for administering the provisions of the law,

rules, regulations, and standards as contained in this chapter and licensing Texas driver training programs.

(10) ~~[(8)]~~ Division director--The person designated by the commissioner of education to carry out the functions and regulations governing the driver education schools and designated as director of the division responsible for licensing driver training programs.

(11) Educational objectives--The goal to promote respect for and encourage observance of traffic laws and traffic safety responsibilities of driver education and citizens; reduce traffic violations; reduce traffic-related injuries, deaths, and economic losses; and motivate development of traffic-related competencies through education, including, but not limited to, Texas traffic laws, risk management, driver attitudes, courtesy skills, and evasive driving techniques.

(12) ~~[(9)]~~ Good reputation--A person is considered to be of good reputation if:

(A) there are no felony convictions, unless the applicant can successfully demonstrate that the applicant has been rehabilitated [related to the operation of a school, and the person has been rehabilitated from any other felony convictions];

(B) there are no convictions involving crimes of moral turpitude;

(C) within the last seven [ten] years, the person has never been successfully sued for fraud or deceptive trade practice;

(D) the person [does not own or operate a school currently in violation of the legal requirements involving fraud, deceptive trade practices, student safety, quality of education, or refunds;] has not [never] owned or operated a school with serious [habitual] violations; and has never owned or operated a school or course provider which closed with violations including, but not limited to, unpaid refunds or selling, trading, or transferring a DE-964 or uniform certificate of course completion to any person or school not authorized to possess it. In making a determination regarding serious violations, the division may consider the seriousness and number of violations, efforts made to correct the violations, and any history of similar violations;

(E) the person has not failed to provide [withheld] material information to [from] representatives of TEA or falsified instructional records or any documents required for approval or continued approval; [and]

(F) in the case of an instructor, there are no misdemeanor or felony convictions involving driving while intoxicated over the past seven years ; and [-]

(G) in the event that an instructor or applicant has received deferred adjudication of guilt from a court of competent jurisdiction, a determination can be made upon satisfactory review of evidence that the conduct underlying the basis of the deferred adjudication has not rendered the person unworthy to provide driver training instruction. When determining underlying conduct, the commissioner may consider the facts and circumstances surrounding the deferred adjudication.

(13) ~~[(40)]~~ Moral turpitude--Conduct that is inherently immoral or dishonest.

~~[(11)]~~ New course--A driver education course is considered new when it has not been offered previously or has been offered and then discontinued.]

(14) ~~[(42)]~~ Primary [or main] school--A licensed driver education main school that may have branch schools.

~~[(13)] Public or private school--An accredited public or non-public secondary school.]~~

~~§176.1002. Exemptions.~~

(a) Schools desiring to be considered exempt from regulation as authorized by Texas Education Code, §1001.002, ~~[(Civil Statutes, Article 4413(29c), §7,)]~~ shall, upon request, ask for an exemption in writing and provide any information deemed necessary to the division ~~[director]~~ to determine exempt status.

(b) Any school granted exempt status may be required to provide information or be visited by representatives of the Texas Education Agency in order to ensure continued operation in compliance with the exemption provisions.

~~§176.1003. Driver Education School Licensure.~~

(a) Application. An application for a school license for a primary or branch driver education school shall be made on forms supplied by the Texas Education Agency (TEA).

(b) Bond requirements. In the case of an original or a change of owner application, an original bond or approved alternate form of security shall be provided. In the case of a renewal application, an original bond or approved alternate form of security or a continuation agreement for the approved bond currently on file or continuation of an approved alternate form of security shall be submitted. The bond or the continuation agreement shall be executed on the form provided by TEA. Approved alternate forms of security shall adhere to the following guidelines.

(1) An irrevocable letter of credit. The letter shall be in the name of the owner of the school. The letter shall specify the amount of credit extended, which shall be equivalent to the coverage required for a corporate surety bond, and the purpose of the credit. The letter shall contain the signature of an appropriate bank representative. The bank and the letter shall be approved by TEA.

(2) A cash deposit. An irrevocable account shall be established by the school owner in the name of TEA to be drawn upon as needed to pay student refunds as needed if the school closes owing refunds. The account shall be equivalent to the coverage required for a corporate surety bond. The bank and the terms of the account shall be approved by TEA. The TEA shall keep records of deposits and/or withdrawals on the account.

(c) Verification of ownership.

(1) In the case of an original or change of owner application for a primary school, the owner of the school shall provide verification of ownership that includes, but is not limited to, copies of stock certificates, partnership agreements, and assumed name registrations. The division ~~[director]~~ may require additional evidence to verify ownership.

(2) In the case of an original or change of owner application for a branch school, the owner shall submit an application on forms supplied by TEA.

(3) With the renewal application, the owner of the school shall provide verification that no change in ownership has occurred. The division ~~[director]~~ may require additional evidence to verify that no change of ownership has occurred.

(d) Effective date of the driver education school license. The effective date of the school license for a primary driver education school shall be the date designated on the license ~~[is issued. Exceptions may be made if the applicant was in full compliance on the effective date of issue].~~ For a branch school, the expiration date of the driver education school license shall be concurrent with the driver education school license for the primary school.

(e) Purchase of a driver education school.

(1) A person, partnership, or corporation, ~~[or persons]~~ purchasing a licensed driver education school shall obtain an original license.

(2) A driver education school license for a branch school is transferable only to an applicant who owns a currently licensed primary driver education school. A purchaser of a branch school who does not own a currently licensed primary driver education school shall obtain an original driver education school license for a primary school.

(3) Copies ~~[In addition, copies]~~ of the executed sales contracts, bills of sale, deeds, and all other instruments necessary to transfer ownership of the school shall be submitted to TEA. The contract or any instrument transferring the ownership of the school shall include the following statements.

(A) The purchaser shall assume all refund liabilities incurred by the seller or any former owner before the transfer of ownership.

(B) The sale of the school shall be subject to approval by TEA.

(C) The purchaser shall assume the liabilities, duties, and obligations under the enrollment contracts between the students and the seller, or any former owner.

(4) A change of ownership of a driver education school is considered substantially similar if:

(A) in the case of ownership by an individual, when the individual transfers ownership to a corporation in which the individual owns 100% of the stock of the corporation;

(B) in the case of ownership by a corporation, when the ownership is transferred to a partnership in which the stockholders possess equal interest in the owning partnership; or

(C) in the case of ownership by a partnership or a corporation that transfers ownership to a corporation in which the partners hold interest that equals the interest of the owning partnership, or the owning corporation transfers ownership to a different corporation in which the stockholders for both corporations possess equal shares.

(f) New location.

(1) The division ~~[director]~~ shall be notified in writing of any change of address at least five ~~[three]~~ working days before the move.

(2) The school must submit the appropriate fee ~~[and all documents designated by the division director as being necessary. A driver education school license may be issued for the new address after the new facilities have been inspected and the required documents are approved].~~

(3) If ~~[the move is beyond ten miles and, as determined by the division director,]~~ a student is prevented from completing the training at the new location, a pro-rata refund (without deducting any administrative expense) must be made to the student ~~[full refund of all money paid and a release from all obligations are due]~~.

(4) The school must maintain a current mailing address, ~~[and]~~ telephone number, and e-mail address ~~(if applicable)~~ at the division.

(g) Renewal of driver education school license. A complete application for the renewal of a license for a primary or branch driver education school shall be submitted before the expiration of the license and shall include the following:

(1) completed application for renewal;

(2) annual renewal fee, if applicable;

(3) a current list of instructors employed by the school;

(4) executed bond or executed continuation agreement for the bond currently approved by, and on file with, TEA or approved alternate form of security; ~~[and]~~

(5) a current list of all motor vehicles used for instruction;

(6) evidence that all vehicles used for instruction are properly insured; and

(7) ~~[(5)]~~ any other revision or evidence of which the school has been notified in writing that is necessary to bring the school's application for a renewal license to a current and accurate status.

(h) Denial, revocation, or conditional license. The authority to operate a branch school ceases if a primary driver education school license is denied or revoked. The operation of a branch school license may be subject to any conditions placed on the continued operation of the primary driver education school. A driver education school license for a branch school may be denied, revoked, or conditioned separately from the license for the primary school.

(i) Notification of legal action. A school shall notify the division ~~[director]~~ in writing of any legal action that may affect ~~[concern]~~ the operation of, or is filed against, the school, its officers, any owner, or any school instructor within five working days after the school, its officers, any owner, or any school instructor has commenced the legal action or has been served with legal process. Included with the written notification, the school shall submit a file-marked copy of the petition or complaint that has been filed with the court.

(j) School closure.

(1) The school owner shall notify TEA at least five ~~[15]~~ business days before the anticipated school closure. In addition, the school owner shall provide written notice of the actual discontinuance of the operation the day of cessation of classes. A school shall make all records available for review to TEA upon request ~~[within 30 days of the date the school ceases operation].~~

(2) The division ~~[director]~~ may declare a school to be closed:

~~[(A) as of the last day of attendance when written notification is received by TEA from the school owner stating that the school will close;]~~

~~[(B) when TEA staff determine by means of an on-site visit that the school facility has been vacated without prior notification of change of address given to TEA and without TEA approval of future plans to continue to operate;]~~

~~[(C) when an owner with multiple school locations transfers all students from one school location to another school location without written notification and TEA approval of future plans to continue to operate;]~~

~~[(D)]~~ (A) when the school does not have the facilities, vehicles, instructors, or equipment to provide training pursuant to this subchapter; or

~~[(E)]~~ (B) when the school owner allows the school license to expire ~~;~~ ~~[or]~~

~~[(F) when students are dismissed for more than ten consecutive days that were identified as class days in the approved class schedule.]~~

(3) If a branch school closes and ~~[is located more than ten miles from the primary school and, as determined by the division director,]~~ a student is prevented from completing the training at the primary location, a pro-rata [full] refund (without deducting any administrative expense) must be made to the student [of all money paid and a release from all obligations are due].

(k) Contract site.~~[Non-exempt course at public or private school.]~~ A school shall receive approval from TEA prior to conducting a class at a contract site ~~[non-exempt course at a public or private school]~~, and approval may be granted by TEA upon review of the agreement made between the licensed driver education school and the contract site ~~[public or private school]~~. The course shall be subject to the same rules that apply at the licensed driver education school, including periodic inspections by TEA representatives. An on-site inspection is not required prior to approval of the course.

~~[(4) Itinerant schools. Schools that conduct classes on a short-term basis to provide training in communities that do not have access to the training being offered will not be required to file a change of address application for each location; however, the school shall not operate in more than one location at a time and shall give written notice in advance of each location. The written notice shall include, but not be limited to, the new address, information about the population, how the course will be advertised, assurance that no other training facility is located in the area that can service the community, business hours, the length of time the school will be located at the new site, where student records will be maintained, and any other assurances requested by the division director. The division director will determine whether the school meets the criteria of an itinerant school.]~~

§176.1004. Driver Education School Responsibility for Employees.

(a) All instruction in a driver education course shall be performed by Texas Education Agency (TEA)-licensed instructors in locations approved by TEA. However, a student instructor-trainee ~~[instructor]~~ may teach any practice teaching necessary for the purpose of licensing in a TEA-approved location under the direction and in the presence of a licensed supervising teacher. [If a licensed instructor leaves the employment of any driver education school, the school director shall notify the division director in writing within five days, indicating the name and license numbers of the school and the instructor, the termination date, and a statement about the termination.]

(b) Each driver education school shall:

(1) ensure that each individual permitted to give classroom instruction or in-car instruction at the school or classroom location has a valid current driver education instructor's license with the proper endorsement issued by the division, except as provided in subsection (a) of this section;

~~[(2) prohibit an instructor from giving instruction or prohibit a student from securing instruction in the classroom or in a motor vehicle if that instructor or student is using or exhibits any evidence or effect of an alcoholic beverage, controlled substance, drug, abusable glue, aerosol paint, or other volatile chemical as those terms are defined in the Alcoholic Beverage Code, §1.04(1); and the Health and Safety Code, §§481.002, 484.002, and 485.001;]~~

(2) ~~[(3)]~~ provide instruction or allow instruction to be provided only in courses that are currently on the school's list of approved courses;

(3) ~~[(4)]~~ complete, issue, or validate a DE-964 only to a person who has successfully completed the entire portion of the course for which the DE-964 is being issued;

~~[(5)]~~ authorize, approve, or conduct instruction in a motor vehicle that meets the requirements stated in §176.1014 of this title (relating to Motor Vehicles);

(5) ~~[(6)]~~ not falsify driver education records; and

(6) ~~[(7)]~~ ensure that no instructor provides more than eight hours of behind-the-wheel instruction per day.~~;~~ and]

~~[(8) ensure that at least once each year that each teaching assistant and teaching assistant (full) giving instruction is evaluated by a driver education teacher, school director, assistant director, assigned designee, or owner for quality while providing actual instruction to students and that the evaluation is made part of the instructor's personnel file.]~~

(c) For the purposes of Texas Education Code, Chapter 1001, ~~[Civil Statutes, Article 4413(29e);]~~ and this chapter, each person employed by or associated with any driver education school shall be deemed an agent of the driver education school, and the school may share the responsibility for all acts performed by the person which are within the scope of the employment and which occur during the course of the employment.

§176.1005. School Directors, Assistant Directors, and Administrative Staff Members.

(a) Each school shall designate one person as the school director or assistant director.

(1) Duties. The school director or assistant director shall be responsible for all actions related to instruction, day-to-day operation and administration of the school. When the school director or assistant director is unavailable at the school, the owner shall designate a person to provide student records, contracts and schedules, as well as access to driver education vehicles, to division staff. This liaison person is not required to pay an application fee.

(2) Qualifications. The person designated as the school director or assistant director shall have one of the following:

~~[(A) a baccalaureate degree from an accredited institution of higher learning (four-year college or university) and one year of paid experience in administration, supervision, or management of a driver education school;]~~

~~[(B)]~~ a total of three [five] years of higher education and/or administrative/management experience; or

~~[(C)]~~ a current license as a driver education instructor ~~[and at least three years experience as a driver education instructor].~~

(b) The school director for a driver education school may designate an administrative staff member. Duties and qualifications shall be at the discretion of the school director, assistant director, or school owner.

~~[(1) Duties. The administrative staff member may perform all the administrative functions of the school.]~~

~~[(2) Qualifications. The administrative staff member shall have a high school diploma, GED, or equivalent or be a licensed driver education instructor.]~~

(c) An individual who has been designated as the school director, assistant director, or administrative staff person shall be approved by the Texas Education Agency before assuming duties [as the school director or administrative staff member before employment as such].

(d) Violations at the school ~~[or by the school director or the administrative staff member]~~ may result in removal of the approval of the school director and/or the administrative staff member.

§176.1006. *Driver Education Instructor License.*

(a) Application for licensing as a driver education instructor shall be made on forms supplied by the Texas Education Agency (TEA). A person is qualified to apply for a driver education instructor license who:

- (1) is of good reputation;
- (2) has a high school diploma or equivalent; and

(3) holds a valid class A, B, C, or CDL driver's license, other than a learner's permit, for the preceding five years and [in the areas for which the individual is to teach,] which has not been suspended, revoked, or forfeited in the past five years [for traffic-related violations].

(b) A person applying for an original driver education instructor ~~[instructor's]~~ license shall submit to TEA the following:

- (1) complete application as provided by TEA;
- (2) processing and annual instructor licensing fees; and
- (3) documentation showing that all applicable educational requirements have been met. Original documentation shall be provided upon the request of the division ~~[director]~~ ; ~~[; and]~~

~~[(4) any other information necessary to show compliance with applicable state and federal requirements.]~~

(c) A person applying for a driver education instructor license may qualify for the following endorsements.

- (1) Supervising teacher.

(A) The application shall include:

(i) a current, valid Texas teacher's certificate with proof of successful completion of appropriate [all state] examinations issued by the State Board for Educator Certification (SBEC) to the applicant and an official transcript indicating successful completion of 15 semester hours of driver and traffic safety education from an accredited college or university. Completion of course work in an approved alternative certification program may suffice for all or part of the 15 semester hours of driver and traffic safety education if TEA determines that the course is equivalent; or

(ii) a current, valid Texas teacher's certificate with evidence of successful completion of appropriate [all state] examinations issued by SBEC to the applicant and evidence of successful completion of a TEA-approved ~~[an approved]~~ instructor development course that is equivalent to 15 semester hours.

(B) Responsibilities of a supervising teacher include:

(i) instruction and administration of the classroom and in-car phases of driver education to teens and adults as prescribed in the program of organized instruction for driver education approved by TEA and this chapter; and

(ii) instruction of a TEA-approved ~~[approved]~~ driver education instructor development course ~~[courses]~~.

- (2) Driver education teacher.

(A) The application shall include:

(i) a current, valid Texas teacher's certificate with proof of successful completion of appropriate [all state] examinations issued by SBEC to the applicant and an official transcript indicating successful completion of nine semester hours of driver and traffic safety education from an accredited college or university. Completion of

course work in an approved alternative certification program may suffice for all or part of the nine semester hours of driver and traffic safety education if TEA can determine that the course is equivalent; or

(ii) a current, valid Texas teacher's certificate with evidence of successful completion of appropriate [all state] examinations issued by SBEC to the applicant and evidence of successful completion of a TEA-approved ~~[an approved]~~ instructor development course that is equivalent to nine semester hours.

(B) Responsibilities of a driver education teacher include instruction and administration of the classroom and in-car phases of driver education to teens and adults as prescribed in the program of organized instruction for driver education approved by TEA and this chapter.

- (3) Teaching assistant.

(A) The application shall include:

(i) a valid teaching assistant certificate issued by the appropriate TEA division that indicates approval for in-car instruction only;

(ii) an official transcript indicating successful completion of six semester hours of driver and traffic safety education from an accredited college or university. Completion of course work in an approved alternative certification program may suffice for all or part of the six semester hours of driver and traffic safety education if TEA can determine that the course is equivalent; or

(iii) evidence of successful completion of a TEA-approved ~~[an approved]~~ instructor development course that is equivalent to six semester hours.

(B) The duties of a teaching assistant are limited to in-car instruction.

- (4) Teaching assistant (full).

(A) The application shall include:

(i) a valid teaching assistant certificate issued by the appropriate TEA division that indicates approval for all phases of laboratory instruction and instructional ~~[limited non-instructional]~~ assistance in the classroom; or

(ii) an official transcript indicating successful completion of nine semester hours of driver and traffic safety education from an accredited college or university. Completion of course work in an approved alternative certification program may suffice for all or part of the nine semester hours of driver and traffic safety education if TEA can determine that the course is equivalent; or

(iii) evidence of successful completion of a TEA-approved ~~[an appropriate]~~ instructor development course that is equivalent to nine semester hours.

(B) A ~~[AH]~~ teaching assistant ~~[assistants]~~ (full) is authorized ~~[are allowed]~~ to teach all phases of in-car instruction and assist certified teachers in the classroom phase of teen and adult driver education. All classroom instruction provided by a teaching assistant (full) shall be endorsed by a licensed driver education teacher or supervising teacher. The certified teacher shall be the teacher of record who will assume responsibility for the classroom instruction provided by the teaching assistant (full). The teacher of record shall sign all completed classroom instruction records. In emergency situations, the school owner may request prior approval from the division to endorse classroom instruction records provided by a teaching assistant (full). [provided the licensed driver education teacher is present for full-time

instruction. A teaching assistant (full) may be allowed to act as a temporary substitute classroom instructor of no more than 25% of the classroom phase of a course. The full-time duties are limited to the following areas:]

[(i) grading or handing out written assignments;]

[(ii) operating audiovisual equipment; and]

[(iii) providing in-car instruction for teens and adults. A teaching assistant (full), if properly certified to do so, may also teach simulator and multicar driving range training.]

(5) Rehabilitative driver education in-car instructor.

(A) The application shall include:

(i) a valid driver education teaching assistant certificate issued by the appropriate TEA division or evidence of completion of an approved driver education program for certification as a teaching assistant that is equivalent to at least six semester hours [(six to nine semester hours)]; and

(ii) evidence of employment by, or a written contract with, the specific hospital or approved community rehabilitation program.

(B) The endorsement will be valid only during the time the instructor is employed by or under contract with the specified hospital or approved community rehabilitation program and will entitle the instructor to provide in-car driver education instruction only at the specified hospital or approved community rehabilitation program.

[(6) Temporary non-renewable driver education teacher:]

[(A) The application shall include:]

[(i) a Texas teaching certificate with an effective date before February 1, 1986;]

[(ii) evidence of commitment on a TEA-generated form to take the next available Texas Examination of Current Administrators and Teachers (TECAT); and one of the following:]

[(H) an official transcript indicating successful completion of nine semester hours of driver and traffic safety education from an accredited college or university. Completion of course work in an approved alternative certification program may suffice for all or part of the nine semester hours of driver and traffic safety education if TEA can determine that the course is equivalent; or]

[(II) evidence of successful completion of an appropriate instructor development course:]

[(B) Responsibilities of a temporary non-renewable driver education teacher include instruction and administration of the classroom and in-car phases of driver education to teens and adults as prescribed in the program of organized instruction for driver education approved by TEA and this chapter.]

[(C) The application for the endorsement shall include payment of the processing and annual instructor licensing fees. The endorsement will be valid for a six-month period and shall not be renewed. If the instructor can provide evidence of successful completion of TECAT on or before the expiration date of the temporary license, an application for a license with an endorsement as a driver education teacher can be submitted as an application for an upgrade.]

(d) An application for renewal of an instructor license shall be submitted on forms provided by TEA and shall be postmarked or hand-delivered at least 30 days before the date of expiration or a late instructor renewal fee shall be imposed. A complete application shall include the following:

(1) annual licensing fee; and

(2) evidence of completing continuing education during the individual license renewal period.

[(d) A renewal application for a driver education instructor license must be prepared using the following procedures:]

[(1) Application for renewal of an instructor license shall be made on a form provided by TEA and shall be accompanied by the annual instructor licensing fee and evidence of continuing education on a form provided by TEA or its equivalent.]

[(2) A complete license renewal application shall be postmarked or hand-delivered at least 30 days before the date of expiration or a late instructor renewal fee shall be imposed. A complete application includes:]

[(A) completed application for renewal;]

[(B) annual renewal fee; and]

[(C) evidence of continuing education.]

(e) Continuing education requirements include the following.

(1) Driver education instructors shall participate in and provide evidence of completion of at least one of the following to obtain credit for continuing education. Credit will be given only for courses that were completed during the appropriate licensing period.

(A) Instructors may participate in a TEA-approved driver education continuing education course provided by an approved driver education school. Evidence of completion of continuing education shall be provided for each instructor during the individual license renewal period on TEA forms or the equivalent. The instructor receiving instruction, and the facilitator, presenter, or the school owner providing the instruction shall sign the form.

(B) Credit may be given for successful completion of a postsecondary course that pertains to instruction techniques or instruction related to driver education as provided by an accredited college or university. Evidence of completion shall be a copy of official school documentation indicating a passing grade.

(C) Credit may be given for successful completion of an approved driver education instructor development course or TEA-approved alternative certification program for driver education. Evidence of completion shall be verifiable records of successful completion of the course.

(D) Credit may be given for successful completion of national, state, or regionally sponsored in-service workshops, seminars, or conferences. These programs must pertain to subject matters that relate to the practice of driver education or teaching techniques. [Each program must receive approval by the division director in order to qualify as a continuing education program.]

(E) Credit may be given for successful completion of an approved six-hour driving safety, specialized, or drug and alcohol driving awareness course once every three years[- However, successful completion of an approved six-hour driving safety course will be allowed only] if the licensee is not endorsed or has not been endorsed as an [a driving safety] instructor in that program for a period of one year previous to class attendance.

(2) Carryover credit of continuing education hours shall not be permitted.

(3) A licensee may not receive credit for completing the same course more than once every three years.

(4) A licensed driver education instructor who teaches an approved continuing education or instructor development course may receive credit for attending continuing education.

(5) A licensed driver education instructor may not receive credit for driver education continuing education by completing a driving safety continuing education course approved for driving safety only.

(f) An instructor who has allowed a previous license to expire shall file an original application on a form provided by TEA and shall include the processing and annual instructor licensing fees and evidence of continuing education completed within the last year. Evidence of driver and traffic safety education training ~~[educational experience]~~ may not be required to be resubmitted if the documentation is on file at TEA.

(g) All driver education instructor license endorsement changes shall require the following:

(1) written documentation showing all applicable educational requirements have been met to justify endorsement changes; and

(2) the annual ~~[instructor]~~ licensing fee.

(h) All other license change requests, including duplicate instructor licenses or name changes, shall be made in writing and shall include payment of the duplicate instructor license fee.

(i) The TEA shall be notified of an instructor's change of address in writing. Address changes shall not require payment of a fee.

(j) All instructors shall notify the division ~~[director]~~ and school owner in writing of any criminal complaint ~~[identified in subsection (e) of this section]~~ filed against the instructor within five working days of commencement of the criminal proceedings. The division ~~[director]~~ may require a file-marked copy of the petition or complaint that has been filed with the court.

~~[(k) All instructors shall provide training in an ethical manner so as to promote respect for the purposes and objectives of driver training as identified in Texas Civil Statutes, Article 4413(29e), §2.]~~

~~[(k) [(h)] An instructor shall not make any sexual or obscene comments or gestures while performing the duties of an instructor.~~

~~[(l) [(m)] An instructor shall not falsify driver education records.~~

~~[(n) A driver education instructor may not teach more than eight hours of behind-the-wheel instruction per day.]~~

~~[(m) [(o)] The commissioner of education may suspend, revoke, or deny a license to any driver education instructor under any of the following circumstances.~~

(1) The applicant or licensee has been convicted of any felony, or an offense involving moral turpitude, or an offense of involuntary or intoxication manslaughter, or criminally negligent homicide committed as a result of the person's operation of a motor vehicle, or an offense involving driving while intoxicated or driving under the influence of drugs, or an offense involving tampering with a governmental record.

(A) These particular crimes relate to the licensing of instructors because such persons, as licensees of TEA, are required to be of good moral character and to deal honestly with the state and members of the public. Driver education instruction involves supervision of inexperienced drivers on public highways and accurate record keeping and reporting for driver licensing, court documentation, and other purposes. In determining the present fitness of a person who has been convicted of a crime and whether a criminal conviction directly relates to

an occupation, TEA shall consider those factors stated in Texas Occupations Code, Chapter 53 [Civil Statutes, Article 6252-13e and Article 6252-13d].

(B) In the event that an instructor is convicted of such an offense, the instructor's license will be subject to revocation or denial. A conviction for an offense other than a felony shall not be considered by TEA under this paragraph if a period of more than ten years has elapsed since the date of the conviction or of the release of the person from the confinement, conditional release, or suspension imposed for that conviction, whichever is the later date. For seven years after an instructor is convicted of an offense involving driving while intoxicated, the instructor's license shall be recommended for revocation or denial.

(C) For the purposes of this paragraph, a person is convicted of an offense when a court of competent jurisdiction enters an adjudication of guilt on an offense against the person, whether or not:

(i) the sentence is subsequently probated and the person is discharged from probation; or

(ii) the person is pardoned for the offense, unless the pardon is expressly granted for subsequent proof of innocence.

(2) The applicant, licensee, any instructor, or agent is addicted to the use of alcoholic beverages or drugs or becomes incompetent to safely operate a motor vehicle or conduct classroom or in-car instruction properly.

(3) The license was improperly or erroneously issued.

(4) The applicant or licensee fails to comply with the rules and regulations of TEA regarding the instruction of drivers in this state or fails to comply with any section of Texas Education Code, Chapter 1001 [Civil Statutes, Article 4413(29e)].

(5) The instructor fails to follow procedures as prescribed in this chapter.

(6) The applicant or licensee has a personal driving record showing that the person has accumulated ten or more penalty points in the past three-year period. The standards for assessing penalty points for convictions of traffic law violations and accident involvements appearing on the instructor's current driving record are established by the Texas Department of Public Safety and are the same as those used for Texas school bus drivers.

~~[(7) If an instructor or applicant has received deferred adjudication of guilt from a court of competent jurisdiction, a determination can be made upon satisfactory review of evidence that the conduct underlying the basis of the deferred adjudication has rendered the person unworthy to provide driver training instruction.]~~

§176.1007. Courses of Instruction.

(a) The educational objectives of driver training courses shall include, but not be limited to, promoting respect for and encouraging observance of traffic laws and traffic safety responsibilities of driver education and citizens; reducing traffic violations; reducing traffic-related injuries, deaths, and economic losses; and motivating development of traffic-related competencies through education, including, but not limited to, Texas traffic laws, risk management, driver attitudes, courtesy skills, and evasive driving techniques.

(b) This section contains requirements for driver education courses. For each course, curriculum documents and materials may be requested as part of the application for approval.

(1) Teenage driver education.

(A) The driver education classroom phase for students between the ages of 14-18 shall consist of a minimum of 32 hours of

classroom instruction. The in-car phase must consist of 7 hours of behind-the-wheel instruction and 7 hours of in-car observation. Schools are allowed five minutes of break per instructional hour for all phases. No more than ten minutes of break time may be accumulated for each two hours of instruction.

(B) Driver education course curriculum [Course] content, minimum instruction requirements, and administrative guidelines for [each phase of driver education] classroom instruction, in-car training (behind-the-wheel and observation), simulation, and multicar range shall include the educational [instructional] objectives established by the commissioner of education and meet the requirements of this subchapter. [Copies of the instructional objectives and the sample instructional modules may be obtained from the Texas Education Agency (TEA). Schools may use sample instructional modules developed by the Texas Education Agency (TEA) [TEA] or develop their own instructional modules based on the approved Program of Instruction for Driver Education and Traffic Safety [instructional objectives]. The educational [instructional] objectives are organized into all [the following] topics and include objectives for classroom and in-car training (behind-the-wheel and observation), simulation lessons, parental involvement activities, and evaluation techniques. In addition, the educational [instructional] objectives shall include information relating to litter prevention, anatomical gifts, leaving children in vehicles unattended, distractions, and alcohol awareness and the effect of alcohol on the effective operation of a motor vehicle that must be provided to every student enrolled in a teenage driver education course. [A teenage driver education program of organized instruction shall include:]

[(i) Module One: Texas Driver Responsibilities - Knowing Texas Traffic Laws: A student may apply to the Texas Department of Public Safety for an instruction permit after completing six hours of instruction as specified by this module;]

[(ii) Module Two: Preparing to Operate the Vehicle;]

[(iii) Module Three: Basic Maneuvering Tasks - Low Risk Environment;]

[(iv) Module Four: Basic Maneuvering Tasks - Moderate Risk Environment;]

[(v) Module Five: Information Processing - Moderate Risk Environment;]

[(vi) Module Six: Information Processing - Multiple Lane Expressways;]

[(vii) Module Seven: Driver Performance - Personal Factors;]

[(viii) Module Eight: Driver Responsibilities - Adverse Conditions;]

[(ix) Module Nine: Texas Driver Responsibilities - Vehicle Functions; and]

[(x) Module Ten: Texas Driver Responsibilities - The Wise Consumer and Driver Assessment;]

(C) Driver education schools that desire to instruct students ages 14-18 shall provide the same [classes with uniform] beginning and ending dates. No student shall be allowed to enroll and start the classroom phase after the sixth [Students shall be enrolled and in attendance in the class before the seventh] hour of classroom instruction has been completed.

(D) Students shall proceed in the [a] sequence identified in the Program of Instruction for Driver Education and Traffic Safety

approved for that school. [by the division director. The units of instruction shall meet the requirements of the instructional objectives;]

(E) Students shall receive classroom instruction [directly] from an instructor who is approved [certified] and licensed by TEA; except that no more than 25% of the classroom phase may be provided by a licensed teaching assistant (full) when a certified instructor is not available. School owners may request prior approval from the division director to allow a teaching assistant (full) to provide additional instruction in emergency situations. The request must be in writing and include details about the emergency situation. The division director may require additional evidence to verify the emergency situation. An instructor shall be in the classroom and available to students during the entire 32 hours of [scheduled] instruction, including self-study assignments. Instructors shall not have other teaching assignments or administrative duties during the 32 hours of [scheduled] classroom instruction.

(F) Motion picture films, slides, videos, tape recordings, guest speakers, and other instructional media that present concepts required [outlined] in the Program of Instruction for Driver Education and Traffic Safety [instructional objectives] may be used as part of the required [instructional hours of the] 32 hours of classroom instruction. These instructional aids [Units scheduled to be instructed may also be conducted by guest speakers as part of the required hours of instruction. Together, these] shall not exceed 640 minutes of the total 32 hours.

(G) Self-study assignments occurring during regularly scheduled class periods shall not exceed 25% of the course and shall be presented to the entire class simultaneously.

(H) Each classroom student shall be provided a driver education textbook designated by the commissioner of education [currently adopted by the State Board of Education] or access to instructional materials that are in compliance with the Program of Instruction for Driver Education and Traffic Safety [or modules] approved for the school [by the division director]. Instructional materials, including textbooks, must be in a condition that is legible and free of obscenities.

(I) A copy of the current edition of the "Texas Driver Handbook" or instructional materials that are equivalent shall be furnished to each student enrolled in the classroom phase of the driver education course.

(J) Each student, including make-up students shall be provided their own seat and table or desk while receiving classroom instruction. A school shall [may] not enroll [permit] more than 36 students [per driver education class], excluding make-up students, and the number of students may not exceed the number of seats and tables or desks available at the school [provided the school has adequate seating facilities and tables or desks for all students being trained].

(K) When a student changes schools, [interrupting the driver education course;] the school must follow the current transfer policy developed by TEA and Texas Department of Public Safety (DPS).

(L) All [The] classroom phases [phase] of driver education, including make-up work, shall be completed within the timelines stated in the original student contract. This shall not circumvent the attendance and progress requirements.

(M) All in-car lessons shall consist of actual driving instruction. No school shall permit a ratio of [less than two; or] more than four[;] students per instructor or exceed the seating and occupant restraint capacity of the vehicle used for instruction. Schools that allow one-on-one instruction shall notify the parents in the contract. [; except in-car instruction may be provided for only one student when it

is not practical to instruct more than one student or a hardship would result if scheduled instruction is not provided. The school shall obtain a waiver signed and dated by the parent or legal guardian of the student and the school director stating that the parent or legal guardian understands that the student may be provided in-car instruction on a one-on-one basis with only the instructor and student present in the vehicle during instruction. The waiver may be provided for any number of lessons; however, the waiver shall specify the exact number of lessons for which the parent is providing the waiver. The waiver shall be signed before the first lesson in which the parent is granting permission for the student to receive one-on-one instruction. The in-car phase shall be completed within the timelines stated in the original student contract. This shall not circumvent the attendance and progress requirements.]

(N) A student must have a valid driver's license or instruction permit in his or her possession during behind-the-wheel instruction.

(O) All in-car instruction shall begin no earlier than 5:00 a.m. and end no later than 11:00 p.m. The division [director] may approve exceptions; however, the request shall be made in writing by the school owner or school director and include acknowledgment by all parents in the form of signatures.

(P) A school may use multimedia systems, simulators, and multicar driving ranges for in-car instruction in a driver education program. Each simulator, including the filmed instructional programs, and each plan for a multicar driving range must meet state specification developed by DPS and TEA. [Simulators are electromechanical equipment that provide for teacher evaluation of perceptual, judgmental, and decision-making performance of individuals and groups. With simulation, group learning experiences permit students to operate vehicular controls in response to audiovisual depictions of traffic environments and driving emergencies. The specifications are available from TEA.]

(Q) A minimum of four periods of at least 55 minutes per hour of instruction in a simulator may be substituted for one hour of in-car instruction. A minimum of two periods of at least 55 minutes per hour of multicar driving range instruction may be substituted for one hour of in-car instruction relating to elementary or city driving lessons. However, a minimum of four hours must be devoted to behind-the-wheel instruction. Seven hours of in-car observation is required regardless of combinations used.

(R) A driver education program may be scheduled with the classroom phase of instruction presented in block form prior to the in-car phase or concurrently with the in-car phase. Under the block program [and concurrent programs], a student may apply to the DPS for an instruction permit after completing all of the required classroom instruction. Under the concurrent program, the student may apply to the DPS for an instruction permit [or] after completing six hours of classroom instruction designated by the commissioner of education found in the Program of Instruction for Driver Education and Traffic Safety [Module One: Texas Driver Responsibilities - Knowing Texas Traffic Laws; as identified in subsection (b)(1)(B)(i) of this section].

(S) When a student receives an instruction permit from DPS under the concurrent schedule provision, the instructor must record the license number. A student licensed under the concurrent program must subsequently complete the required classroom instruction. If a student does not subsequently complete the required class instruction, the instructor must complete DPS Form DL-42 and send it to the DPS division responsible for license and driver records. Form DL-42 should be prepared as soon as it is evident the student will not complete the required hours of instruction. The DPS may then revoke the student's instruction permit. Form DL-42 should not be prepared

and submitted to DPS when the student successfully completes the classroom phase of instruction.

(T) Driver education instruction is limited to eligible students who are at least 14 years of age when the driver education classroom phase begins and who will be 15 years of age or older when the behind-the-wheel and multicar range instruction begins.

(U) Each school owner that teaches driver education courses shall collect adequate student data to enable TEA to evaluate the overall effectiveness of the driver education course in reducing the number of violations and accidents of persons who successfully complete the course. The commissioner of education may determine a level of effectiveness that serves the purposes of Texas Education Code, Chapter 1001 [Civil Statutes, Article 4413(29e)].

(2) Adult driver education. Courses offered to persons who are over 18 years old must be offered in accordance with the following guidelines.

(A) Driver education schools that offer a classroom driver education program for the purpose of preparing an adult to pass the written examination required to obtain a learner's permit or driver's license [to adults] shall submit and receive approval of the course from TEA. The request for approval must include a syllabus, contract, and instructional records that will be used with the course.

(B) An adult driver education course may be approved as required under Transportation Code, §521.222(c), if the course meets the minimum standards outlined in this paragraph.

(i) Minimum course content. For students desiring to obtain an instruction permit under a concurrent program, the adult driver education course shall consist of a minimum six clock hours of classroom instruction that meets or exceeds the minimum requirements for the first six hours of a teenage driver education outlined in the Program of Instruction for Driver Education and Traffic Safety [program of organized instruction for driver education] approved by TEA.

(ii) Course management. An approved [Approved] adult driver education course [courses] shall be presented in compliance with the following guidelines.

(I) Students shall receive classroom instruction [directly] from a licensed supervising teacher, driver education teacher, or teaching assistant (full). The instructor shall be physically present in appropriate proximity to the student for the type of instruction being given. [TEA-licensed driver education teacher or supervising teacher, who shall be in the classroom and available to students during the entire six hours of instruction. The teacher shall not have other teaching assignments or administrative duties during the six hours of classroom instruction.]

(II) A copy of the current edition of the "Texas Driver Handbook" or study material that is equivalent shall be furnished to each student enrolled in the course.

[(III) A driver education school shall not permit more than 36 students per class in the six-hour adult driver education course:]

[(IV) Thirty minutes of time, exclusive of the 330 minutes of instruction, may be dedicated to break periods. All break periods shall be provided after the course has begun and before the conclusion of the course:]

[(V) Administrative procedures, such as enrollment and attendance, shall not be included in the 360 minutes of instruction:]

(c) This section contains requirements for driver education instructor development courses. For each course, the following curriculum documents and materials are required to be submitted as part of the application for approval. If the course meets the minimum requirements set forth in this subchapter, the division [~~director~~] may grant an approval. Schools desiring to provide driver education instructor development courses shall provide an application for approval that shall be in compliance with this section.

(1) Schools desiring to obtain approval for a driver education instructor development course shall request an application for approval from TEA. All instructor development curricula submitted for approval shall meet or exceed the requirements set forth for approved programs offered at colleges, universities, school districts, or educational service centers and shall be specific to the area of specialization. Guidelines and criteria for the course shall be provided with the application packet, and the school shall meet or exceed the criteria outlined.

(2) Prior to enrolling a student in a driver education instructor development course, the school owner or representative must obtain proof that the student has a high school diploma or equivalent. A copy of the evidence must be placed on file with the school. Further, the school shall obtain and evaluate a current official driving record from the student prior to enrollment. The individual must not have accumulated ten or more penalty points in the past three-year period on a driving record evaluation. The school must use the standards for assessing penalty points for convictions of traffic law violations and accident involvements appearing on the instructor's current driving record established by the DPS that are the same as those used for Texas school bus drivers.

(3) Instruction records shall be maintained by the school and supervising teacher for each instructor trainee and shall be available for inspection by authorized division representatives at any time during the training period and/or for license investigation purposes. The instruction record shall include: the trainee's name, address, driver's license number, and other pertinent data; name and instructor license number of the person conducting the training; and dates of instruction, lesson time, and subject taught during each instruction period. Each record shall also include grades or other means of indicating the trainee's aptitude and development. Upon satisfactory completion of the training course, the supervising teacher conducting the training will certify one copy of the instruction record for attachment to the trainee's application for licensing, and one copy will be maintained in a permanent file at the school.

(4) All student instruction records submitted for the approved instructor development courses shall be original documents.

(5) [~~All driver education instructor development courses shall be taught at a licensed driver education school, except when required by approved subject matter that relates directly to the course or topics approved by TEA.~~] A properly licensed supervising teacher shall teach the course. The supervising teacher may allow driver education teachers and teaching assistants to provide training in areas appropriate for their level of certification and/or licensure. The supervising teacher must be in appropriate proximity during all instruction except independent study [~~self-study~~] and research assignments which shall not exceed 25% of the total training program time.

(6) Schools desiring to teach driver education instructor development courses shall either submit course offerings as a part of the school application or, if offered periodically, submit the dates and scheduled instructors' names and license numbers before teaching the course.

(d) This section contains requirements for driver education continuing education courses.

(1) Driver education school owners may receive an approval for a four-hour [~~six-hour~~] continuing education course and provide the approved course to instructors to ensure that instructors meet the requirements for continuing education.

(2) The request for course approval shall contain the following:

(A) a description of the plan by which the course will be presented;

(B) the subject of each unit;

(C) the educational [~~instructional~~] objectives of each unit;

(D) time to be dedicated to each unit;

(E) instructional resources for each unit, including names or titles of presenters and facilitators; and

(F) a plan by which the school owner will monitor and ensure attendance and completion of the course by the instructions within the guidelines set forth in the course.

(3) A continuing education course may be approved if TEA determines that:

(A) the course constitutes an organized program of learning that enhances the instructional skills, methods, or knowledge of a licensed driver education instructor;

(B) the course pertains to subject matters that relate directly to the practice of driver education instruction, instruction techniques, or driver education-related subjects; and

(C) the entire course shall be taught by individuals with recognized experience or expertise in the area of driver education or related subjects. The division [~~director~~] may request evidence of the individuals' experience or expertise.

(4) Driver education school owners may not offer the same continuing education course to instructors each year. In order to continue to offer a course, a new or revised continuing education course shall be submitted to TEA for approval.

(5) The division [~~director~~] must be notified of the scheduled dates, times, and locations of all continuing education courses [~~no less than ten days~~] prior to the first day of class [~~being held~~].

(e) A branch school may offer only a course that is approved for the primary school.

(f) Schools applying for approval of additional courses after the original approval has been granted shall submit the documents designated by the division [~~director~~] with the appropriate fee. Courses shall be approved before soliciting students, advertising, or conducting classes. An approval for an additional course shall not be granted if the school's compliance is in question at the time of application.

(g) If an approved course is discontinued, the division [~~director~~] shall be notified within five days [~~72 hours~~] of discontinuance and furnished with the names and addresses of any students who could not complete the course because it was discontinued. If the school does not make arrangements satisfactory to the students and the division [~~director~~] for the completion of the courses, the full amount of all tuition and fees paid by the students are due and refundable. If arrangements are not made satisfactory to the students and the division [~~director~~], the refunds must be made no later than 30 days after the course was discontinued. Any course discontinued shall be removed from the school's approval.

(h) If, upon review and consideration of an original, renewal, or amended application for course approval, the commissioner of education determines that the applicant does not meet the legal requirements, the commissioner shall notify the applicant, setting forth the reasons for denial in writing.

(i) The commissioner of education may revoke approval of a school's courses under certain circumstances, including, but not limited to, the following.

(1) Information ~~[A statement]~~ contained in the application for the course approval is found to be untrue.

(2) The school has failed to maintain the instructors ~~[faculty]~~, facilities, equipment, or courses of study on the basis of which approval was issued.

(3) The school offers a course which has not been approved or for which there are no instructors or ~~[facilities and]~~ equipment.

(4) The school has been found to be in violation of Texas Education Code, Chapter 1001 [Civil Statutes, Article 4413(29e)], and/or this chapter.

~~[(5) The course has been found to be ineffective in carrying out the purpose of the Texas Driver and Traffic Safety Education Act.]~~
§176.1008. Student Enrollment Contracts.

(a) A written legal student enrollment contract shall be executed prior to the school's receipt of any money. ~~[If no monies are received prior to enrollment or attendance, a driver education student's enrollment contract shall be executed no more than 72 hours after the start date of the driver education class or before the seventh hour of the driver education course, whichever is earliest.]~~

(b) All driver education student enrollment contracts shall contain at least the following:

(1) the student's legal name and driver's license ~~[or social security]~~ number;

(2) the student's address, including city, state, and zip code;

(3) the student's telephone number;

(4) the student's date of birth;

(5) the full legal name and license number of the primary school or the branch school;

(6) the specific course to be taught;

(7) the agreed total contract charges that itemize all tuition, fees, and other charges;

(8) the terms of payment;

(9) the number of classroom lessons;

(10) the length of each lesson or course;

(11) the school's cancellation and refund policy;

(12) a statement indicating the specific location, date, and time that instruction is scheduled to begin; ~~[the date classroom instruction is scheduled to end; and the amount of time a student has to complete all make-up assignments and in-car instruction. The parent or guardian who signs the contract must initial this area;]~~

(13) the number of in-car lessons;

(14) the rate per lesson or course for classroom instruction;

(15) the rate per lesson or course for in-car instruction;

(16) the rates for use of a school car for a road test (if an extra charge is made);

(17) a statement that the school maintains a business insurance policy for vehicles with coverage as required by Transportation Code, Chapter 601, and uninsured or underinsured coverage;

(18) the signature of a school representative; and

(19) the student's signature or, if the driver education student is younger than 18, the signature of the parent or guardian. The signature of the parent or guardian is not required for an individual younger than 18 who is, or has been, married or whose disabilities of minority have been removed generally by law. Instead, such an individual shall:

(A) present a marriage certificate or a divorce decree (but not an annulment decree) or other satisfactory evidence of marriage or of having been married; or

(B) present a court order showing removal of disabilities of minority; or

(C) present a notarized parental authorization.

(c) In addition, all driver education student enrollment contracts shall contain statements substantially as follows.

(1) I have been furnished a copy of the school tuition schedule; cancellation and refund policy; and school regulations pertaining to absence, grading policy, progress, and rules of operation and conduct.

(2) The school is prohibited from issuing a DE-964 if the student has not met all of the requirements for course completion, and the student should not accept a DE-964 under such circumstances.

(3) This agreement constitutes the entire contract between the school and the student, and assurances or promises not contained herein shall not bind the school or the student.

(4) I further realize that any grievances not resolved by the school may be forwarded to Driver Training, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. The current telephone number of the division shall also be provided.

(d) A copy ~~[The original]~~ of the enrollment contract shall be delivered to the parent or guardian that signed the contract ~~[given to each driver education student]~~.

(e) A copy of each enrollment contract shall be a part of the student files maintained by all driver education schools.

(f) Schools shall submit proposed or amended enrollment contracts to the division ~~[director, and these documents shall be approved prior to use by schools]~~.

(g) Student enrollment contracts used at branch schools must be those approved for use at the primary school.

§176.1009. Progress.

Appropriate standards shall be implemented to ascertain the progress of the students.

(1) Progress standards shall meet the requirements of the Program of Instruction for Driver Education and Traffic Safety ~~[instructional objectives of the program of organized instruction for driver education]~~ approved by the commissioner of education ~~[Texas Education Agency]~~.

(2) Each primary school shall submit to the division ~~[director]~~ for approval procedures ~~[an established procedure]~~ to ensure that each student who attends the primary school and all branch schools

demonstrates an acceptable level of mastery of the Program of Instruction for Driver Education and Traffic Safety ~~[instructional objectives for driver education]~~. Mastery is not related to passing the written examination for a driver's license administered by the Texas Department of Public Safety. Successful completion and mastery are prerequisites [is a prerequisite] to awarding a grade of 70% or above.

(3) One or more of the following methods shall determine evidence of successful completion and mastery:

- (A) unit tests;
- (B) written assignments;
- (C) skills performance checklist; and
- (D) comprehensive examinations of knowledge and skills.

~~[(4) The progress evaluation record shall be of the type and nature to reflect whether the student is making satisfactory progress to the point of being able to complete all subject matter within the allotted time provided in the currently approved program of organized instruction for driver education.]~~

(4) ~~[(5)]~~ The instructor must certify that each student successfully mastered all course content before the student is awarded successful completion of a driver education program.

~~[(6) The school should provide parents and legal guardians with evaluations of the student progress and recommend parental involvement techniques to enhance the driver education training.]~~

§176.1010. Attendance and Makeup.

(a) Written ~~[Appropriate standards, which include positive] records of student attendance [;] shall be prepared daily to document [implemented to ascertain] the attendance and absence of the students. A student must make up any time missed.~~

(b) ~~[A student must make up any time missed of the approved program of organized instruction.]~~ Schools are allowed five minutes of break per instructional hour.

(c) Driver education training is limited to five ~~[four]~~ hours per day. Classroom instruction shall not exceed two hours per day, excluding make-up work. In-car instruction shall not exceed three hours per day as follows: ~~[(excluding classroom make-up lessons); which can consist of any combination of the following:]~~

(1) three hours or less of in-car training; however, behind-the-wheel instruction is limited to one hour per day, except as provided in subsection (d) of this section; or

~~[(1) two hours or less of scheduled classroom instruction;]~~

~~[(2) one hour or less of behind-the-wheel instruction;]~~

~~[(3) four hours or less of in-car observation;]~~

(2) ~~[(4)]~~ three hours or less of simulation instruction; or
~~[and/or]~~

(3) ~~[(5)]~~ three ~~[two]~~ hours or less of multicar range instruction; or ~~[driving.]~~

(4) any combination of the methods delineated in this subsection that does not exceed three hours per day.

(d) A two-hour increment of behind-the-wheel instruction may be offered once during the behind-the-wheel instruction for each student and shall include ten minutes of instructional break after 55 minutes of instruction as identified in §176.1007(b)(1)(A) of this title (relating to Courses of Instruction).

~~(e) [(d)]~~ The attendance policy shall limit a student's absences to no more than ten classroom hours of a 32-classroom-hour session [stipulate that students who accumulate absences of more than 25% of the scheduled classroom hours for teenage driver education shall be terminated, and a refund shall be totally consummated within 30 days]. A ~~[The]~~ student whose classroom enrollment is terminated for violating ~~[violations of]~~ the attendance policy may not reenter before the start of the next new class. ~~[If the student enters the next new class and completes the scheduled classroom hours within the timeline specified in the original student enrollment contract, refunds that were due may be transferred to the new contract.]~~

~~(f) [(e)]~~ The student may receive credit for previous training if the student reenters and completes the applicable portion of the course within the timeline specified in the original student enrollment contract, starting from the first scheduled day of class on the original contract.

~~(g) [(f)]~~ Schools shall submit a make-up policy to the division ~~[director]~~ for approval. ~~[The make-up policy shall be developed by the school and shall ensure that all instructional hours and minimum course content required for the classroom and in-car phases are completed within the timelines specified in the original student enrollment contract.]~~ All absences are subject to the attendance policy regardless of whether the student attends make-up lessons. Students may be allowed to complete up to ten hours of classroom make-up work assignments outside of regularly scheduled classroom instruction ~~[at home]~~. Schools shall not initiate nor encourage absences. Make-up policies shall adhere to the following requirements:

(1) For a policy that allows a student to attend a missed lesson on the same date or at a later date at a regularly scheduled class, the class shall be engaged in the same lesson the student missed previously.

(2) For a policy that allows a student to perform an individual make-up lesson, a sample of each make-up lesson, clearly labeled as "makeup for the driver education course," shall be available for review by the Texas Education Agency at the school. Each lesson shall be clearly identified as a make-up lesson and identified as to the units of instruction to be covered. Evidence of make-up completed outside of regularly scheduled classroom instruction ~~[take-home makeup]~~ shall be placed in the student file.

~~(h) [(g)]~~ A school may allow a student to attend an alternative class on the same calendar day ~~[as the class the student was previously scheduled to attend. The school may provide alternative scheduling only]~~ if the sequence of instruction will be maintained by the identical lesson being offered. The ~~[in the alternative class time. In addition to all other requirements, the]~~ student instruction record shall reflect the time of day the alternative class was attended. A student selecting alternative scheduling shall not be considered absent.

~~[(h) The enrollment of students who do not complete all required instructional hours within the timelines specified in the original student enrollment contract will be terminated.]~~

(i) Variances to the timelines for completion of the driver education instruction stated in the original student enrollment contract may be made at the discretion of the school owner and must be agreed to in writing by the parent or guardian.

§176.1011. Conduct Policy.

~~[(a) The primary school shall submit a copy of the policies pertaining to conduct to the Texas Education Agency for approval. Branch schools shall use the policies approved for use at the primary school.]~~

~~[(b)]~~ A statement regarding the following shall be provided to the parent or guardian signing the contract ~~[submitted]:~~

- (1) conditions for dismissal; and

(2) conditions for reentry of [those] students [dismissed for violating the conduct policy].

§176.1012. Cancellation and Refund Policy.

(a) School cancellation and refund policies shall be in accordance with Texas Education Code (TEC), Chapter 1001 [Civil Statutes, Article 4413(29e)].

(b) Refunds for all driver education schools shall be completed within 30 days after the effective date of termination except as allowed under §176.1010(d) of this title (relating to Attendance and Makeup). Proof of completion of refund shall be the refund document or copies of both sides of the canceled check and shall be on file within 75 days of the effective date of termination. All refund checks shall identify the student to whom the refund is assigned. In those cases where multiple refunds are made using one check, the check shall identify each individual student and the amount to be credited to that student's account.

(c) In reference to TEC, §1001.404 [Texas Civil Statutes, Article 4413(29e), §13(h)(4)], the interest rate on unpaid refunds is set at 250% [17.25%].

(d) In reference to TEC, §1001.404 [Texas Civil Statutes, Article 4413(29e), §13(h)(4)], a school is considered to have made a good faith effort to consummate a refund if the student file contains evidence of the following attempts:

- (1) certified mail to the student's last known address;
- (2) certified mail to the student's permanent address; and
- (3) certified mail to the address of the student's parent, if different from the permanent address.

(e) If it is determined that the method used by the school to calculate refunds is in error or the school does not routinely pay refunds within the time required by TEC, §1001.402(b)(5) [Texas Civil Statutes, Article 4413(29e), §13(h)(2)(E)], the school shall submit a report of an audit which includes any interest due as set forth in TEC, §1001.404 [Texas Civil Statutes, Article 4413(29e), §13(h)(4)], conducted by an independent certified public accountant or public accountant who is properly registered with the appropriate state board of accountancy, of the refunds due former students. The audit opinion letter shall be accompanied by a schedule of student refunds due which shall disclose the following information for the previous two years from the date of request by the Texas Education Agency (TEA) for each student:

- (1) name, address, and [either social security number or] driver's license number;
- (2) last date of attendance or date of termination; and
- (3) amount of refund with principal and interest separately stated, date and check number of payment if payment has been made, and any balance due.

(f) Any funds received from, or on behalf of, a student shall be recorded in a format that is readily accessible to representatives of TEA and acceptable to the division [director].

(g) Branch schools shall use the policies approved for use at the primary school.

§176.1013. Facilities and Equipment.

[(a) Each driver education school licensed by the commissioner of education shall display, in a prominent place in each location, a sign or notice indicating the following:]

- [(1) rates per lesson or course for classroom instruction;]
- [(2) rates per lesson or course for in-car instruction;]

[(3) rates for use of school vehicle for road tests (if extra charge is made); and]

[(4) length of lessons and course for classroom and in-car instruction.]

[(b) No classroom facility shall be located in a private residence. Driver education schools, including primary and branch schools, that offer the classroom phase for adult or teenage driver education shall have a permanent year-round facility. The classroom facilities, when used for instruction, shall contain at least the following:]

[(1) adequate seating facilities and tables or desks for all students being trained;]

[(2) a chalkboard, a dry-erase board, or felt display board for the driver education classroom, which is visible from all seating positions;]

[(3) adequate charts, diagrams, mock-ups, and pictures relating to the operation of motor vehicles, traffic laws, physical forces, and correct driving procedures; and]

[(4) any materials that have been approved as a part of the course approval.]

(a) [(e)] Each school shall conduct the Texas Education Agency-approved driver education course in a facility or facilities approved by the division. [that promotes the purpose and objectives as set forth in the Texas Driver and Traffic Safety Education Act or the educational objectives set forth in this chapter. The school owner shall maintain the school's facilities and equipment in good condition and protect it against misuse, abuse, waste, and deterioration except for ordinary wear and tear resulting from its intended use. Good condition shall mean that the facilities and equipment shall be in at least an equivalent state as at the time of the original approval.]

[(d) Additional classrooms may be approved for use by a licensed driver education school for the purpose of offering driver education courses. The school owner shall provide a proposal that shall be approved before using the additional classroom facilities. The proposal shall include:]

[(1) a floor plan indicating the exact dimensions of the classroom facility and its location in respect to the school facilities. The classroom facilities shall be located in the same building as the main school, or in the case of portable facilities, the structure shall be on the property owned or leased by the school and immediately adjacent to the school facility;]

[(2) evidence that the school owner owns, has leased, or is able to lease the classroom facilities. In the case of portable facilities, evidence shall be submitted that the structure can be placed on the property leased or owned by the school owner in the location designated in the proposal; and]

[(3) any other items or assurances requested by the division director.]

(b) [(e)] A school offering any phase of teen driver education [and/or adult classroom instruction] shall maintain an office in a place other than a private residence; and no classroom facility for teen or adult driver education programs shall be located in a private residence.

(c) [(f)] The amount of classroom space shall meet the use requirements of the maximum number of current students in class with appropriate seating and writing facilities as necessitated by the activity patterns of the course.

(d) ~~[(g)]~~ Enrollment shall correspond to ~~[not exceed]~~ the design characteristics of the student workstations. The facilities shall meet any state and local ordinances governing housing and safety for the use designated.

§176.1014. Motor Vehicles.

(a) All in-car instruction of students in driver education schools shall be conducted in motor vehicles owned or leased by the owner of the driver education school in the name of the driver education school. If the student is disabled, the school may use a motor vehicle that is owned by the student or student's parent that is equipped with special vehicle controls. All school motor vehicles and vehicles for students with physical disabilities that are used to demonstrate or practice driving lessons shall:

(1) be equipped with dual control brake pedals so that there is a foot brake located within easy reach of the instructor that is capable of bringing the vehicle to a stop and otherwise be equipped in accordance with Texas motor vehicle laws;

(2) be equipped with safety belts, and students and instructors shall comply with requirements of Transportation Code, §545.413;

(3) be properly registered in compliance with the motor vehicle registration laws of Texas and bear a current motor vehicle inspection certificate;

(4) be insured by a company authorized to do business in Texas with a continuous liability business insurance policy in the amount specified in Transportation Code, Chapter 601, and include coverage for uninsured or underinsured motorists;

(5) be equipped with an extra inside rearview mirror on the instructor's side and an outside rearview mirror on both sides. The visor mirror shall not substitute for the instructor's inside rearview mirror; and

(6) meet the requirements to pass vehicle inspection as required by the Transportation Code, Chapter 548, at the time of use.

~~[(6) be maintained in safe mechanical and physical condition at all times; and]~~

~~[(7) if the student is a student with disabilities, be equipped with all applicable mechanical devices and/or other modifications or accommodations as determined to be necessary and appropriate based on evaluation data provide by a professional assessment;]~~

(b) School owners shall submit with the school license renewal application a current list of all motor vehicles used for instruction ~~[ensure that the division director is notified at all times of all vehicles that are to be used for instruction purposes. Notification shall be made on forms provided by the Texas Education Agency (TEA)].~~

(c) All vehicles shall be insured in accordance with subsection (a)(4) of this section and shall have evidence available for inspection by Texas Education Agency (TEA) ~~[TEA]~~ representatives.

(d) If it is found that the school has used an unsafe vehicle according to guidelines used for inspection of vehicles in the state of Texas or has used an uninsured vehicle, TEA may ~~[shall]~~ impose a civil penalty not to exceed \$1,000 for each ~~[per]~~ day ~~[that]~~ the unsafe or uninsured vehicle was used. Each vehicle shall constitute a separate offense.

~~[(e) If it is found that the school is using an unsafe vehicle according to guidelines used for inspection of vehicles as required by Transportation Code, Chapter 548, TEA shall disapprove use of the vehicle until evidence of safety has been reviewed and approved by the division director;]~~

(e) ~~[(f)]~~ All students must be seated in forward-facing seats in the vehicle that are in compliance with seatbelt capacities. Only one student and one instructor shall be seated in the front seat.

§176.1015. Student Complaints.

~~[(a)]~~ The primary school shall have a written grievance procedure ~~[approved by the division director]~~ that is disclosed to all students. Branch schools shall follow the procedures approved for the primary school. The function of the procedure shall be to attempt to resolve disputes between students, including terminations and graduates, and the school. Student ~~[Adequate]~~ records shall be maintained and available for review.

~~[(b) The branch or primary school shall make every effort to resolve complaints;]~~

§176.1016. Records.

(a) A driver education school shall accurately complete all school records and applications and furnish upon request any data pertaining to student enrollments and attendance, as well as records and necessary data required for licensure and to show compliance with the legal requirements for inspection by authorized representatives of the Texas Education Agency (TEA). The records shall include timecards for instructors and schedules that reflect the duties and instruction times for instructors that correlate to the times that are shown on timecards. There may be announced or unannounced on-site visits at each school each year. ~~[Other compliance surveys may be announced at the discretion of the division director;]~~

(b) The schools shall retain all student records for at least three years. A school shall maintain the records of the students who completed driver education classes at the site of instruction ~~[school]~~ for the most current 12 months~~[- except that branch schools may transfer completed student records to the primary school]~~. The school owner shall maintain all other driver education records at a location accessible by the school owner after 12 months. All records pertaining to each completed student must be kept at one location. Schools with no current enrollment may request approval from the division ~~[director]~~ to transfer records to the primary ~~[a fully operational]~~ school or another approved location.

(c) The school shall maintain a daily record of attendance for all students enrolled at the instruction site. The record shall include the information specified in this subsection.

(1) Attendance records shall include legend entries. Each entry made on the legend must be made by using symbols, abbreviations, or other appropriate markings to indicate the following:

- (A) absent;
- (B) makeup;
- (C) present;
- (D) date; and
- (E) time.

(2) The individual student record form (classroom) for all students, including completed, terminated, or withdrawn, shall include the following:

- (A) name and classroom address of the school;
- (B) name, full address, telephone number of the student, and date of birth;
- (C) date instruction terminated, if applicable;

(D) type and driver's license or permit number, if applicable, held by the student, including the expiration date and licensing state;

(E) month, day, year, and start and end time of instruction;

(F) each unit of instruction;

(G) grade earned for each unit;

(H) instruction hours for teen and adult classroom, simulators, behind-the-wheel, and observation;

(I) initials of each instructor providing the classroom or in-car lesson. The instructor's signature and license number shall appear at least once on the form. The teacher of record shall sign all completed teen classroom instruction records;

(J) beginning and ending dates of the classroom phase; and

(K) statement of assurance signed by student and instructor that the record is true and correct.

(3) The individual student record form (in-car instruction) shall contain the following entries:

(A) month, day, year, and start and end time of instruction;

(B) each lesson of instruction;

(C) score earned for each lesson;

(D) name of student; and

(E) instructor's name and license number or instructor initials (if instructor's name and license number appears at least one time on the record).

(4) Each driver education school shall retain a copy of the DE-964 in the appropriate student files.

[(e) A driver education school licensed by TEA shall maintain a permanent record of instruction given to each student who received instruction to include students who withdrew or were terminated.]

[(1) Individual students.]

[(A) The entries on the individual student record form shall be made in ink and updated on a daily basis. The minimum requirements indicating attendance entries shall be maintained by using symbols or abbreviations of the following:]

[(i) absent;]

[(ii) makeup;]

[(iii) present;]

[(iv) termination;]

[(v) withdraw; and]

[(vi) transfer.]

[(B) The individual student record form for driver education shall include the following:]

[(i) name and classroom address of the school;]

[(ii) name, full address, telephone number of the student, and date of birth;]

[(iii) date instruction terminated, if applicable;]

[(iv) type and number of license held by the student, including the expiration date and licensing state;]

[(v) month, day, year, and time of day of instruction;]

[(vi) each unit of instruction;]

[(vii) grade earned for each unit;]

[(viii) instruction hours for classroom, simulators, behind-the-wheel, and observation;]

[(ix) initials of each instructor for each classroom session or in-car lesson. The instructor's signature and license number shall appear at least once on the form;]

[(x) beginning and ending dates of the course;]

[(xi) statement of assurance signed by student and instructor that the record is true and correct;]

[(xii) adult classroom;]

[(xiii) adult behind-the-wheel;]

[(xiv) adult simulation;]

[(xv) teen classroom;]

[(xvi) teen behind-the-wheel and observation; and]

[(xvii) teen simulation.]

[(2) DE-964. Each driver education school shall retain a copy of the DE-964 in the appropriate student files.]

(d) Each driver education school shall, upon request, furnish each individually contracted student a duplicate of his or her instruction record when all of the courses contracted for are completed or the student otherwise ceases taking instruction at or with the school, providing all financial obligations have been met by the student.

[(e) Each driver education school shall maintain a list of students enrolled in each class. An enrolled student, for purposes of this requirement, shall mean any person who has received classroom or in-car instruction or for whom a student enrollment contract has been executed or monies paid.]

[(e) [(f)] Driver education schools shall not release student records that identify the student by name or address, or may lead to such identification, except:

(1) to authorized representatives of the TEA;

(2) to a peace officer;

(3) under court order or subpoena; or

(4) with written consent of both the student and at least one parent or legal guardian, if the student is under 18 years of age.

§176.1017. Names and Advertising.

(a) No primary school shall adopt, use, or conduct any business under a name that is like, or deceptively similar to, a name used by another licensed driver education school, [or] driving safety school, course provider, or approved driving safety course without written consent of that school or course provider. Schools holding a name approved by the Texas Education Agency (TEA) as of August 31, 1995, may continue to use the name approved by TEA. No new license will be issued to a driver education school [after August 31, 1995;] with a name like, or deceptively similar to, a name used by another licensed driver education school, [or] driving safety school, course provider, or approved driving safety course.

(b) A school license shall not contain more than one school name. ~~[Schools that hold approvals for more than one name as of August 31, 1995, shall provide written notice to TEA of the name that will be selected for the school at the renewal period subsequent to adoption of this rule.]~~ Use of names other than the approved school name may constitute a violation of this section.

(c) Branch schools shall adopt, use, and conduct business with the same name as the primary school.

(d) A school shall not, by advertisement or otherwise, state or imply that a driver's license, permit, or DE-964 is guaranteed or assured to any student or individual who will take or complete any instruction or enroll or otherwise receive instruction in any driver education school.

(e) A school shall not advertise without including the school name or the school number exactly as it appears on the driver education school license.

(f) The division ~~[director]~~ may require that a school furnish proof to TEA that substantiates any advertising claims made by the school. Failure to provide acceptable proof may require that the school publish a retraction of such advertising claims in the same manner as the disputed advertisement. Continuation of such advertising shall constitute cause for suspension of student enrollments or DE-964s and/or revocation of the school license and/or assessment of civil penalty.

~~[(g) Continuance of an advertisement that has been determined to be false, misleading or deceptive, without action to discontinue the advertisement after notice, shall result in assessment of a civil penalty. The penalty shall be assessed regardless of who was responsible for an error or misprint in the original placement of the advertisement.]~~

~~[(h) The division director may deny approval of any course or the issuance of any required school license or invoke sanctions if a school advertises before the later of:]~~

~~[(1) the 30th day after the date the school applies for a driver education school license; or]~~

~~[(2) the date the school receives a driver education school license from the commissioner of education.]~~

§176.1018. Driver Education Certificates (DE-964).

(a) The DE-964 shall be issued only to primary driver education schools. The primary driver education school shall maintain a record reconciling all DE-964s that are distributed to branch driver education contract sites ~~[schools and courses offered by the primary school at public or private schools].~~

(b) School owners shall be responsible for the DE-964 in accordance with this subsection.

(1) A licensed or exempt driver education school may request ~~[to receive]~~ the serially numbered DE-964s by submitting an order form provided by the Texas Education Agency (TEA) stating the number of DE-964s to be purchased and including payment of all appropriate fees. The form shall have the original signature of the driver education school owner or school director ~~[when submitted]~~.

(2) A driver education school shall not transfer DE-964s to a school other than the school for which the certificates were ordered from TEA, without written approval from the division ~~[director]~~.

(3) Each driver education school owner shall maintain the TEA copies of the DE-964s in ascending numerical order. The driver education school owner shall submit the TEA copies of all issued certificates to TEA at least once every 90 days ~~[as soon as a batch of certificates has been used]~~. The school owner shall return unissued DE-964s to TEA within 30 days from the date the school discontinues the driver education program, unless otherwise notified.

(4) Each driver education school owner shall ensure that the policies concerning the DE-964 are followed and communicated to all instructors and employees of the school and that the DE-964s are signed and issued as approved ~~[in accordance with the current certificate format developed]~~ by TEA.

(5) The driver education school owner or school director shall maintain effective protective measures to ensure that unissued DE-964s are secure. The driver education school owner or school director shall report all unaccounted DE-964s to the division ~~[director]~~ within ~~five~~ ~~[two]~~ working days of the discovery of the incident. In addition, the driver education school shall be responsible for conducting an investigation to determine the circumstances surrounding the unaccounted DE-964s. A report of the findings of the investigation, including preventative measures for recurrence, shall be submitted to the division ~~[director]~~ within 30 days of the discovery. Failure to provide adequate security may result in action against the instructor and/or school approvals and licenses. Each unaccounted ~~[or missing]~~ DE-964 may be considered a separate violation within the meaning of Texas Education Code, §1001.553(b) ~~[Civil Statutes, Article 4413(29c), §24(a). This may include lost, stolen, or otherwise unaccounted DE-964s.]~~

(6) No driver education school owner or employee shall complete, issue, or validate a DE-964 to a person who has not successfully completed the entire portion of the course for which the DE-964 is being issued.

~~[(c) Licensed driver education instructors shall be responsible for the DE-964 in accordance with this subsection.]~~

~~[(1) Each driver education instructor shall ensure that the DE-964s are kept in such a manner as to ensure security of the DE-964s.]~~

~~[(2) An instructor signature on the DE-964 shall indicate successful completion of the instruction designated.]~~

~~[(c) [(d)] If a driver education school issues a duplicate DE-964, the duplicate shall indicate the control number of the original DE-964.~~

§176.1019. Application Fees and Other Charges.

(a) If a driver education school changes ownership, the new owner shall pay the same fee as that charged for an initial fee for a school. In cases where, according to §176.1003(e)(4) of this title (relating to Driver Education School Licensure), the change of ownership is substantially similar, the new owner shall pay the statutory fees allowed by Texas Education Code, §1001.151 ~~[Civil Statutes, Article 4413(29c), §13(d)(3)(A)].~~

(b) A late renewal fee shall be paid in addition to the annual renewal fee if the school fails to postmark a complete application for renewal at least 30 days before the expiration date of the driver education school license. The requirements for a complete application for renewal are found in §176.1003(g) of this title (relating to Driver Education School Licensure). The complete renewal application must be postmarked or hand-delivered with a date 30 or more days before the expiration date of the license ~~[on or before the due date]~~.

(c) Driver education instructors applying for school licensure as required by Texas Education Code, §1001.151 ~~[Civil Statutes, Article 4413(29c), §13(b)(2)]~~, shall pay the fee amount set forth in statute.

(d) License, application, and registration fees shall be collected by the commissioner of education and deposited with the state treasurer according to the following schedule.

(1) The initial fee for a primary school is \$1,000.

(2) The initial fee for a branch school is \$850.

(3) The renewal fee for a driver education school is \$200.

(4) The fee for a change of address of a driver education school is \$180.

(5) The fee for a change of name of a driver education school or to change the name of an owner is \$100.

(6) The application fee for each additional driver education course is \$25.

(7) The application fee for each school director is \$30.

(8) The application fee for each assistant director and each administrative staff member is \$15.

(9) Each application for an original driver education instructor's license shall be accompanied by a processing fee of \$50, except that the fee may not be collected for an applicant who is currently teaching a driver education course in a public school in this state.

(10) The annual instructor license fee is \$25.

(11) The late instructor renewal fee is \$25.

(12) The duplicate driver education instructor license fee is \$8.00 [§8].

(13) The fee for an investigation at a school to resolve a complaint is \$1,000.

(14) The driver education school late renewal fee is \$200.

(15) The fee for a DE-964 is \$2.00.

(e) Failure to pay a required fee or penalty assessed shall be cause for revocation or denial of any license held by a school or instructor of whom the fee or penalty is required. Revocation or denial proceedings shall be started if the fee is not paid within 30 days of the expiration date of the appeal period set forth in Texas Education Code, Chapter 1001 [Civil Statutes, Article 4413(29c), §17].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 10, 2005.

TRD-200500099

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Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: February 20, 2005

For further information, please call: (512) 475-1497



SUBCHAPTER BB. COMMISSIONER'S RULES ON MINIMUM STANDARDS FOR OPERATION OF LICENSED TEXAS DRIVING SAFETY SCHOOLS AND COURSE PROVIDERS

The Texas Education Agency (TEA) proposes amendments to §§176.1101 - 176.1105, 176.1107 - 176.1109, 176.1111 - 176.1113, and 176.1116 - 176.1118, and the repeal of and new §176.1110, concerning driver training schools. The sections establish minimum standards for operation of licensed Texas driving safety schools and course providers. The proposed amendments, repeal, and new rule would remove provisions found to have limited or no statutory authority; repeal and replace the rule governing alternative delivery methods; and

reflect the codification of Vernon's Texas Civil Statutes, Article 4413(29c), titled the Texas Driver and Traffic Safety Education Act, into the Texas Education Code (TEC), Chapter 1001.

Texas Civil Statutes, Article 4413(29c), the Texas Driver and Traffic Safety Education Act, was codified by the 78th Texas Legislature, 2003, as Texas Education Code, Title 5, Chapter 1001. Also during 2003, there was a major reorganization of state government with a view toward streamlining regulatory processes and other governmental functions. In the course of reviewing aspects of the codification, it became apparent that a revision of 19 TAC Chapter 176 was necessary. Currently, rules in this chapter are organized in the following subchapters: Subchapter AA, Commissioner's Rules on Minimum Standards for Operation of Licensed Texas Driver Education Schools; Subchapter BB, Commissioner's Rules on Minimum Standards for Operation of Licensed Texas Driving Safety Schools and Course Providers; Subchapter CC, Commissioner's Rules on Minimum Standards for Operation of Texas Drug and Alcohol Driving Awareness Programs; and Subchapter DD, Commissioner's Rules on Hearings Held Under the Texas Driver and Traffic Safety Education Act. Revisions are proposed for rules in Subchapters AA, BB, and DD.

Comments from the driver training industry, consumers, legislators, and other stakeholders contributed to the revision of 19 TAC Chapter 176, including the repeal and replacement of 19 TAC §176.1110 governing Alternative Delivery Methods of driving safety courses. New definitions would be added to both Subchapters AA and BB to assist all parties in completely understanding certain terms used in the rules. In Subchapters AA, BB, and DD, references to Texas Civil Statutes, Article 4413(29c), would be replaced with corresponding references to the Texas Education Code, Chapter 1001. A few references were not codified and those unchanged references would now show the suffix "(Vernon's 2001)" to refer the reader to the prior version of the law. The decision not to codify non-operative language does not mean that the rule is no longer justified. Editorial changes would be made to standardize language or correct grammar have been made throughout Subchapters AA and BB. These edits include changing reference to the division rather than the division director, as applicable, for clarification and changing reference to a driver's license rather than a driver license for consistency. Changes in Subchapter DD include clarification of timeline requirements.

In order to correct references to newly codified statutory authority and to clarify and modify existing rule language, the following amendments, repeal, and new rule to 19 TAC Chapter 176, Subchapter BB, are proposed.

The amendment to 19 TAC §176.1101 would include changes in paragraph (9)(A) to modify language to broaden the scope of prior felony convictions to be considered, in subparagraph (C) to shorten the length of time for consideration from ten years to seven, in subparagraph (D) to remove unnecessary language and add language to allow the division to consider prior similar violations, and in subparagraph (E) to clarify language. New subparagraph (G) would be added to address applicants who have received deferred adjudication in prior criminal cases.

The amendment to 19 TAC §176.1102 would modify subsection (a) to correct a statutory citation.

The amendment to 19 TAC §176.1103 would modify subsection (e)(1) to change from three working days to five working days for

consistency. Subsection (e) would also be modified by removing paragraph (3) and renumbering the following paragraph. In subsection (i), language in paragraph (1) would be changed to delete the school requirement to notify the agency and program owner prior to school closure. Paragraph (2) would be modified to clarify language.

The amendment to 19 TAC §176.1104 would modify subsection (h) to change the deadline from three days to five and in subsection (k) from 15 days to five days for consistency. Subsection (k) would also be revised to delete an unnecessary statutory citation and new subsection (l) would add the requirement for course providers and facilities to be located in the United States.

The amendment to 19 TAC §176.1105 would modify subsection (a) to add language that requires course providers to maintain a registered agent in Texas, clarify instructor trainee, and delete the requirement to notify TEA when an instructor leaves employment of the school. The proposal would also revise subsection (d) to correct a statutory citation.

The amendment to 19 TAC §176.1107 would modify subsection (c)(1)(A) to change the requirement for driving safety instructor training to accommodate instructors already licensed. Also in subsection (c), the modification to paragraph (2)(A) would make similar accommodation for specialized driving safety instructors. The changes in paragraph (3)(A)(i) - (iii) would reduce the hourly training requirements of instructors already licensed and clause (iv) would be added to clarify driving safety course proof of authorship and initial course demonstration. Revisions in paragraphs (3)(B), (4)(B), (5)(B), and (6)(B) would broaden language to include practical teaching and/or demonstrative presentation records. In addition, changes in paragraph (4)(A)(i) - (iii) would reduce the hours of verifiable experience for a driving safety instructor trainer and clause (iv) would be added to clarify specialized driving safety course proof of authorship and initial course demonstration. Modifications in paragraph (5)(A)(i) would reduce the hours of teaching experience for driving safety instructor trainers and would require the trainer to demonstrate to the division director's designee the ability to teach. Revisions in paragraph (6)(A)(i) would reduce the hours of verifiable experience for a specialized driving safety instructor trainer.

The amendment to 19 TAC §176.1107 would also update subsection (k) to cite a previous version of state law and the year, subsection (n)(1)(A) to correct the reference to Chapter 53 of the Texas Occupations Code, and subsection (n)(4) to correct a statutory citation.

The amendment to 19 TAC §176.1108 would modify subsection (a) to clarify who must submit changes to traditional driving safety courses and change the language to clarify the revocation of approval of inactive courses. The changes in subsection (a)(1)(B)(v) would clarify and correct grammar and in subsection (a)(1)(B)(vi) would remove language to clarify what constitutes a student course guide. Other changes to section would also:

remove language in subsection (a)(1)(C)(v) to allow lunch periods to occur during the 60 minutes of breaks allowed;

delete subsection (a)(1)(C)(ix), removing the requirement for a short video to be shown during class;

revise renumbered subsection (a)(1)(C)(ix) to require sufficient accommodations for all students and renumber the following clause;

change language in subsection (a)(1)(D) to require that courses must assure students master curriculum points delineated;

add new language in subsection (a)(1)(D)(i)(V), that requires TEA-provided information on course content;

add requirements in subsection (a)(1)(D)(iii) to subclause (I) to include aggressive driving and subclause (III) to add drowsy driving;

add new language in subsection (a)(1)(D)(x)(VI), that requires courses to address dangers involved in locking or leaving children in vehicles unattended;

add a requirement in subsection (a)(1)(D)(xi) that courses not address methods to drink and drive and remove subclause (V) regarding countermeasures;

remove a requirement in subsection (a)(1)(D)(xii) for a summation and change the final examination time to a minimum of five minutes rather than 15 minutes;

modify subsection (a)(1)(D)(xiii) to change the remaining allocated course time from 20 to 30 minutes;

update subsection (a)(1)(H) to correct a statutory citation;

add a new subsection (a)(1)(J) to specify requirements for renewal every two years of driving safety courses;

modify subsection (a)(2)(A) to clarify the completion of instructor training hours if alternative training does not apply;

modify subsections (a)(3)(A)(ii)(VI) and (a)(3)(A)(iii)(I) and (III) to clarify language regarding continuing education programs;

change subsection (a)(3)(B) to increase the amount of time for course providers to notify TEA of continuing education courses;

revise subsection (c) to change the deadline for notification from 72 hours to five days for discontinued courses;

modify subsection (e)(1) to broaden the context of falsification in applications;

update subsection (e)(3) to correct a statutory citation; and

change language in subsection (e)(4) to correct the citation for location of the educational objectives.

The amendment to 19 TAC §176.1109 would modify subsection (a)(1)(B)(v) to clarify language regarding audio/video material and revise clause (vi) to delete unnecessary language. Other changes to the section would also:

revise subsection (a)(1)(C)(v) to allow the lunch period to occur during the 60 minutes of breaks required;

change subsection (a)(1)(C)(ix) to require sufficient accommodations for all students;

modify subsection (a)(1)(D) to require that specialized courses contain four hours of child passenger safety seat systems, seat belts, etc. and must assure students' mastery;

add new language in subsection (a)(1)(D)(viii)(VIII) that requires courses to address dangers involved in locking or leaving children in vehicles unattended;

revise subsection (a)(1)(D)(ix) to remove the requirement for a summation and set the final examination time to a minimum of five minutes rather than 15 minutes;

revise subsection (a)(1)(D)(x) to increase the time allowed for other topics in the course from 20 to 30 minutes;

update subsection (a)(1)(H) to correct a statutory citation;

modify subsection (a)(2)(A) to clarify the completion of instructor training hours if alternative training does not apply;

change subsection (a)(3)(B) to change the amount of time for course providers to notify TEA of continuing education courses;

revise subsection (c) to change the deadline for notification from 72 hours to five days for discontinued courses;

modify subsection (e)(1) to broaden the context of falsification in applications;

update subsection (e)(3) to correct a statutory citation; and

change language in subsection (e)(4) to correct the reference citation for educational objectives.

Section 176.1110 would be repealed and replaced with a proposed new section that would set out the requirements for driving safety course Alternative Delivery Methods (ADMs). Included in the new language are provisions for allowing different methods for demonstrating student mastery, comprehension, and participation in the curriculum and a new requirement that written material in ADMs that is read by the student must provide enough content (by word count) to equal the equivalent of a 180-word-per-minute reading rate. Extensive language would be added to control modifications to an ADM while allowing the course provider to make certain changes that are insignificant or in the public interest with minimal review by TEA. The new section would also require that ADM approval be renewed every two years beginning on March 1, 2006.

The amendment to 19 TAC §176.1111 would modify subsection (b)(16) to clarify that the student must be informed of the course provider's security and privacy policy. The modification in subsection (c)(2) would add course providers to the list of entities prohibited from improperly issuing certificates.

The amendment to 19 TAC §176.1112 would update subsections (a), (c), and (d) to correct statutory citations.

The amendment to 19 TAC §176.1113 would remove unnecessary language from subsection (d).

The amendment to 19 TAC §176.1116 would modify subsection (a) to add domain names to the types of names that may not be used by a licensee, remove unnecessary language, and specify that ADMs must also adhere to name and advertising requirements. The revision in subsection (b) would remove unnecessary language and in subsection (c) would add course providers to the responsible parties that may be required to substantiate advertising claims and publish retractions.

The amendment to 19 TAC §176.1117 would update subsections (a)(1), (a)(10), and (c)(4) to correct statutory citations and revise subsection (a)(9) to change language from two business days to five business days for a course provider to report all unaccounted certificates.

The amendment to 19 TAC §176.1118 would update subsections (a) and (d) to correct statutory citations.

Ernest Zamora, Associate Commissioner for Support Services and School Finance, has determined that for the first five-year period the amendments, repeal, and new rule are in effect there will be fiscal implications for state or local government as a result of enforcing or administering the amendments, repeal, and new rule. The net estimated costs for fiscal years 2005 - 2009 would total \$5,400. This is a result of cost savings in the area of driving safety curriculum materials no longer provided by the state and costs to the state for anticipated review of driving safety course

revisions that use a new process under proposed amendments. The net estimated costs for fiscal years 2005 - 2009 are derived as follows:

19 TAC §176.1108(a)(1)(C)(ix) previously required TEA to provide a short videotape presentation for driving safety course providers. The proposed amendment would remove this TEA responsibility and replace it with a written document to be provided to course providers for distribution to their schools (see 19 TAC §176.1108(a)(1)(D)(i)(V)). The estimated cost for production of a replacement videotape for the outdated version and the cost of distribution of additional copies would be \$5,000; therefore, this would be a savings to the state in fiscal year 2005. The estimated cost to produce and disseminate the written document would be approximately \$100 per year in fiscal year 2006 and thereafter. This change to the produce and disseminate a written document rather than a videotape would result in a net savings to the state of \$4,600.

Proposed new 19 TAC §176.1110(j) would require that TEA staff make a determination within five days as to whether requested modifications to an alternative delivery method may be deemed insignificant. These determinations, newly required under the proposal, are estimated at about \$2,000 in payroll costs in fiscal year 2005 and each year thereafter for a total cost to the state of \$10,000.

Dr. Zamora has determined that for each year of the first five years the amendments, repeal, and new rule are in effect the public benefit anticipated as a result of enforcing the amendments, repeal, and new rule would be a net reduction in regulatory requirements for industry members while maintaining a curriculum in driving safety and specialized driving safety (seat belt) programs that meet the intent of legislative mandates. Revisions that require re-approval of courses on a biennial basis assure that students receive the latest information on Texas law and statistics for both the state and nation. There will be an effect on small businesses as a result of the proposed amendments, repeal, and new rule in 19 TAC Chapter 176, Subchapter BB. The estimated savings during fiscal years 2005-2009 for small businesses operating within the industry total \$1,742,500. Relative costs for small and large businesses will be the same. The cost or savings involved are the same per unit, regardless of business size, but the net result will vary depending on business size and volume. There are no anticipated economic costs to persons who are required to comply with the amendment as proposed.

The estimated fiscal impact for businesses during fiscal years 2005-2009 is derived as follows:

The proposed amendment to 19 TAC §176.1105(a) would allow a driving safety course provider to operate with only a registered agent in the state of Texas. Previously, course providers were required to maintain an office and staff and computer equipment in state. The cost savings to each course provider is estimated at \$50,000 in the first year of operation and \$30,000 per year afterward. There are currently five course providers who are headquartered outside of Texas, two of whom have already moved and the other three are expected to keep only registered agents within the state. This would generate an estimated savings of \$300,000 in fiscal year 2005 and \$200,000 each year thereafter.

Proposed changes to training requirements found in 19 TAC §176.1107(c) would reduce the number of hours of training required by an average of 30 hours per instructor. This would result in a savings of about \$600 per instructor and would affect about 250 instructors per year. The resulting savings of

about \$150,000 would be realized by the schools providing the instruction and the instructors who are being trained each fiscal year.

Currently, 19 TAC §176.1108(a)(1)(C)(ix) requires TEA to provide a short videotape presentation for driving safety course providers. The proposed amendment to this rule removes this TEA responsibility and replaces it with a written document to be provided to course providers for distribution to their schools (see proposed 19 TAC §176.1108(a)(1)(D)(i)(V)). This will require an expense to each course provider to disseminate the written material to each of the schools and/or include the material within their alternative delivery methods. The estimated cost is \$250 for each of the current 43 course providers for a total of \$10,750 for fiscal year 2005.

The proposed amendment to 19 TAC §176.1108(a)(1)(D) would add various new curriculum requirements, including the dangers of locking and leaving children in vehicles, distracted driving, and aggressive driving. Course providers must bear the cost of revising curriculum and passing this information on to all schools endorsed to offer the approved course and for revisions to any alternative delivery method endorsed. The estimated cost is \$250 for each of the current 43 course providers for a total of \$10,750 for fiscal year 2005.

Course providers would be required in the proposed amendment to 19 TAC §176.1108(a)(1)(J) to update the statistical and legal materials presented in the approved course biennially, beginning in fiscal year 2006. The cost of these revisions to approved courses and endorsed alternative delivery methods is estimated at \$1,000 for each of the current 43 course providers for a \$43,000 in fiscal year 2006 and again in fiscal year 2008.

Comments on the proposed rules may be submitted to Cristina De La Fuente-Valadez, Policy Coordination, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028.

19 TAC §§176.1101 - 176.1105, 176.1107 - 176.1113, 176.1116 - 176.1118

The amendments and new rule are proposed under the Texas Education Code, §1001.052, which authorizes the agency to adopt and administer comprehensive rules governing driving safety courses, and §1001.053, which authorizes the commissioner of education to adopt and enforce rules necessary to administer driver and traffic safety education and to ensure the integrity of approved driving safety courses and to enhance program quality.

The amendments and new rule implement the Texas Education Code, §§1001.051 - 1001.153.

§176.1101. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Advertising--Any affirmative act, whether written or oral, designed to call public attention to a school and/or course in order to evoke a desire to patronize that school and/or course. This includes Meta tags and search engine listings.

(2) Break--An interruption in a course of instruction occurring after the course introduction and before the comprehensive exam and course summation.

(3) Change of ownership of a school or course provider--A change in the control of the school or course provider. Any agreement to transfer the control of a school or course provider is considered to be a change of ownership. The control of a school or course provider is considered to have changed:

(A) in the case of ownership by an individual, when more than 50% of the school or course provider has been sold or transferred;

(B) in the case of ownership by a partnership or a corporation, when more than 50% of the school or course provider or of the owning partnership or corporation has been sold or transferred; or

(C) when the board of directors, officers, shareholders, or similar governing body has been changed to such an extent as to significantly alter the management and control of the school or course provider.

(4) Clock hour--50 minutes of instruction in a 60-minute period for a driving safety course.

(5) Course validation question--A question designed to establish the student's participation in the course and comprehension of the course material by requiring the student to answer a question regarding a fact or concept taught in the course.

(6) Division--The division of the Texas Education Agency (TEA) responsible for administering the provisions of the law, rules, regulations, and standards as contained in this chapter and licensing driver training programs.

(7) Division director--The person designated by the commissioner of education to carry out the functions and regulations governing the driving safety schools and course providers and designated as director of the division responsible for licensing driver training programs.

(8) Final examination question--A question designed to measure the student's comprehension and knowledge of course material presented after the instruction is completed.

(9) Good reputation--A person is considered to be of good reputation if:

(A) there are no felony convictions, unless the applicant can successfully demonstrate that the applicant has been rehabilitated [related to the operation of a school or course provider; and the person has been rehabilitated from any other felony convictions];

(B) there are no convictions involving crimes of moral turpitude;

(C) within the last seven ~~ten~~ years, the person has never been successfully sued for fraud or deceptive trade practice;

(D) the person ~~[does not own or operate a school or course provider currently in violation of the legal requirements involving fraud, deceptive trade practices, student safety, quality of education, or refunds;]~~ has not ~~[never]~~ owned or operated a school or course provider with serious ~~[habitual]~~ violations; and has never owned or operated a school or course provider which closed with violations including, but not limited to, unpaid refunds or selling, trading, or transferring a driver education certificate or uniform certificate of course completion to any person or school not authorized to possess it. In making this determination, the division may consider the seriousness and number of violations, efforts made to correct the violations, and the history of similar violations;

(E) the person has not failed to provide [withheld] material information to [from] representatives of TEA or falsified instructional records or any documents required for approval or continued approval; and [-]

(F) in the case of an instructor, there are no misdemeanor or felony convictions involving driving while intoxicated over the past seven years; and [-]

(G) in the event that an instructor or applicant has received deferred adjudication of guilt from a court of competent jurisdiction, a determination can be made upon review of evidence that the conduct underlying the basis of the deferred adjudication has not rendered the person unworthy to provide driver training instruction. When determining underlying conduct, the commissioner may consider the facts and circumstances surrounding the deferred adjudication.

(10) Inactive course--A driving safety or specialized driving safety course for which no uniform certificates of completion have been purchased for 36 months or longer.

(11) Instructor trainer--A driving safety instructor or specialized driving safety instructor who has been trained to prepare instructors to give instruction in a specified curriculum.

(12) Moral turpitude--Conduct that is inherently immoral or dishonest.

(13) New course--A driving safety or specialized driving safety course is considered new when it has not been approved by TEA to be offered previously; or has been approved by TEA and offered and then discontinued; or the content, lessons, or delivery of the course have been changed to a degree that a new application is requested and a complete review of the application and course presentation is necessary to determine compliance.

(14) Personal validation question--A question designed to establish the identity of the student by requiring an answer related to the student's personal information such as a driver's [drivers] license number, address, date of birth, or other similar information that is unique to the student.

(15) Public or private school--For the purpose of these rules, a public or private school is an accredited public or non-public secondary school.

(16) Specialized driving safety course--A six-hour driving safety course that includes at least four hours of training intended to improve the student's knowledge, compliance with, and attitude toward the use of child passenger safety seat systems and the wearing of seat belt and other occupant restraint systems.

(17) Uniform certificate of course completion--A document that is printed, administered, and supplied by TEA to owners or primary consignees for issuance to students who successfully complete an approved driving safety or specialized driving safety course and that meets the requirements of Transportation Code, Chapter 543, and Code of Criminal Procedure, Article 45.0511. This term encompasses all parts of a uniform certificate of course completion with the same serial number. It is a government record.

§176.1102. Exemptions.

(a) Schools desiring to be considered exempt from regulation as authorized by Texas Education Code, §1001.002 [Civil Statutes, Article 4413(29e), §7], shall upon request, ask for an exemption in writing and provide any information deemed necessary to the division [director] to determine exempt status.

(b) Any school granted exempt status may be required to provide information or be visited by representatives of the Texas Education

Agency in order to ensure continued operation in compliance with the exemption provisions.

§176.1103. Driving Safety School Licensure.

(a) Application for driving safety school. An application for a license for a driving safety school shall be made on forms supplied by the Texas Education Agency (TEA) and submitted to TEA by the course provider. The application shall:

(1) include individual requests for approval for each multiple classroom of the school. The applications shall be made on forms provided by TEA. The driving safety school shall receive TEA approval for each location prior to advertising or offering a driving safety course at the location; and

(2) include verification from the licensed course provider that the school is authorized to provide the approved driving safety or specialized driving safety course and that the school will operate in compliance with all course provider policies and procedures.

(b) Verification of ownership for driving safety school.

(1) In the case of an original or change of owner application for a driving safety school, the owner of the school shall provide verification of ownership that includes, but is not limited to, copies of stock certificates, partnership agreements, and assumed name registrations. The division [director] may require additional evidence to verify ownership.

(2) With the renewal application, the owner of the school shall provide verification that no change in ownership has occurred. The division [director] may require additional evidence to verify that no change of ownership has occurred.

(c) Effective date of the driving safety school license. The effective date of the driving safety school license shall be the date the license is issued. Exceptions may be made if the applicant was in full compliance on the effective date of issue.

(d) Purchase of driving safety school.

(1) A person or persons purchasing a licensed driving safety school shall obtain an original license.

(2) In addition, copies of the executed sales contracts, bills of sale, deeds, and all other instruments necessary to transfer ownership of the school shall be submitted to TEA. The contract or any instrument transferring the ownership of the driving safety school shall include the following statements.

(A) The purchaser shall assume all refund liabilities incurred by the seller or any former owner before the transfer of ownership.

(B) The sale of the school shall be subject to approval by TEA.

(C) The purchaser shall assume the liabilities, duties, and obligations under the enrollment contracts between the students and the seller, or any former owner.

(e) New location.

(1) The division [director] shall be notified in writing of any change of address of a driving safety school at least five [three] working days before the move.

(2) The school must submit the appropriate fee and all documents designated by the division [director] as being necessary. The documents shall be submitted to TEA by the course provider on behalf of the school. A driving safety school license may be issued after the required documents are approved.

~~{(3) If the move is beyond ten miles and, as determined by the division director, a student is prevented from completing the training at the new location, a full refund of all money paid and a release from all obligations are due.}~~

(3) ~~[(4)]~~ The school must maintain a current mailing address at the division.

(f) Renewal of driving safety school license. A complete application for the renewal of a license for a driving safety school shall be postmarked or hand-delivered by the school to the course provider at least 30 days before the expiration of the license and shall include the following:

- (1) completed application form for renewal;
- (2) current list of instructors;
- (3) current list of classrooms;
- (4) annual renewal fee, if applicable; and

(5) any other revision or evidence of which the school has been notified in writing that is necessary to bring the school's application for a renewal license to a current and accurate status.

(g) Denial, revocation, or conditional license. For schools approved to offer only one driving safety course, the authority to operate a driving safety school shall cease if the course provider license is denied or revoked or if the course provider removes all authorization to teach the course. The license of the driving safety school may continue for 60 calendar days to allow the school owner to obtain approval to operate under a different course provider license. At the end of the 60-day period, the school license shall be revoked unless the school will offer an approved course. A current driving safety school license shall not be renewed without an approved course. A driving safety school license may be denied, revoked, or conditioned separately from the license of the course provider.

(h) Notification of legal action. A school shall notify the division ~~[director]~~ in writing of any legal action that is filed against the school, its officers, any owner, or any school instructor that might concern the operation of the school within five working days after the school, its officers, any owner, or any school instructor has commenced the legal action or has been served with legal process. Included with the written notification, the school shall submit a file-marked copy of the petition or complaint that has been filed with the court.

(i) School closure.

(1) ~~[The school owner shall notify TEA and the course provider at least 15 business days before the anticipated school closure. The school owner shall provide written notice to TEA and the course provider of the actual discontinuance of the operation within five working days after the cessation of classes.]~~ A school shall forward all records to the course provider responsible for the records within five business days of closure.

(2) The course provider shall provide TEA with written notice of a school closure within five business ~~[working]~~ days after being notified of closure ~~[knowledge of cessation of classes]~~.

(3) The division ~~[director]~~ may declare a school to be closed:

(A) as of the last day of attendance when written notification is received by TEA from the school owner or course provider stating that the school will close;

(B) when TEA staff determine by means of an on-site visit that the school facility has been vacated without prior notification

of change of address given to TEA and without TEA approval of future plans to continue to operate;

(C) when an owner with multiple school locations transfers all students from one school location to another school location without written notification and TEA approval of future plans to continue to operate;

(D) when the school owner allows the school license to expire; or

(E) when the school does not have the facilities and equipment to operate pursuant to this subchapter.

(j) Course at public or private school. A school shall receive approval from TEA prior to conducting a course at a public or private school, and approval may be granted by TEA upon review of the agreement made between the licensed driving safety school and the public or private school. The course shall be subject to the same rules that apply at the licensed driving safety school, including periodic inspections by TEA representatives. An on-site inspection is not required prior to approval of the course.

§176.1104. Course Provider Licensure.

(a) Application for course provider. An application for a license for a course provider shall be made on forms supplied by the Texas Education Agency (TEA). An application from a course provider that is a primary consignee shall include evidence of permission from the course owner to operate as the primary consignee.

(b) Bond requirements for course provider. In the case of an original or a change of owner application, an original bond shall be provided. In the case of a renewal application, an original bond or a continuation agreement for the approved bond currently on file shall be submitted. The bond or the continuation agreement shall be executed on the form provided by TEA. Posting of a \$25,000 bond shall satisfy the requirements for financial stability for a course provider.

(c) Course provider license. The course provider license shall indicate the name of the driving safety course for which approval is granted exactly as stated in the application for the course approval.

(d) Verification of ownership for course provider.

(1) In the case of an original or change of owner application for a course provider, the owner of the course provider shall provide verification of ownership that includes, but is not limited to, copies of stock certificates, partnership agreements, and assumed name registrations. The division ~~[director]~~ may require additional evidence to verify ownership.

(2) With the renewal application, the owner of the course provider shall provide verification that no change in ownership has occurred. The division ~~[director]~~ may require additional evidence to verify that no change of ownership has occurred.

(e) Adequate educational and experience qualifications. The course provider shall provide as part of the application sufficient documentation to support adequate educational and experience qualifications in order to carry out the responsibilities of a course provider. Verifiable education and/or experience in administration and/or supervision shall be required. Adequate educational and experience qualifications have been satisfied if the course provider meets one of the following.

(1) A course provider who has owned or been a primary consignee of an approved driving safety course and has been fully operational as a course provider in the State of Texas for a continuous 12-month period before September 1, 1995, satisfies the educational and experience qualifications.

(2) A course provider who has an approved driving safety course but has not been fully operational as a course provider for a continuous 12-month period must submit evidence of at least one year of experience in administration and/or supervision.

(3) A new course provider shall submit evidence of:

(A) at least 30 semester credit hours of education from an accredited postsecondary institution and two years of paid experience in administration and/or supervision; or

(B) a combined total of three years of driver and traffic safety education or experience and administrative/management experience; however, a minimum of six months in each shall be required.

(f) Effective date of the course provider license. The effective date of the course provider license shall be the date the license is issued. Exceptions may be made if the applicant was in full compliance on the effective date of issue.

(g) Purchase of course provider.

(1) A person or persons purchasing a licensed course provider shall obtain an original license. The application for a new course provider that is a primary consignee shall include evidence of permission from the course owner to operate as the primary consignee.

(2) In addition, copies of the executed sales contracts, bills of sale, deeds, and all other instruments necessary to transfer ownership of the course provider shall be submitted to TEA. The contract or any instrument transferring the ownership of the course provider shall include the following statements.

(A) The purchaser shall assume all refund liabilities incurred by the seller or any former owner before the transfer of ownership.

(B) The sale of the course provider shall be subject to approval by TEA.

(C) The purchaser shall assume the liabilities, duties, and obligations under the enrollment contracts between the students and the seller, or any former owner.

(3) A change of ownership of a course provider is considered substantially similar:

(A) in the case of ownership by an individual, when the individual transfers ownership to a corporation in which the individual owns 100% of the stock of the corporation;

(B) in the case of ownership by a corporation, when the ownership is transferred to a partnership in which the stockholders possess equal interest in the owning partnership; or

(C) in the case of ownership by a partnership or a corporation that transfers ownership to a corporation in which the partners hold interest that equals the interest of the owning partnership, or the owning corporation transfers ownership to a different corporation in which the stockholders for both corporations possess equal shares.

(4) In the event a change of ownership is substantially similar, the applicant pays a change in ownership fee as opposed to an initial application fee.

(h) New location.

(1) The division [director] shall be notified in writing of any change of address of a course provider at least five [three] working days before the move.

(2) The course provider must submit the appropriate fee and all documents designated by the division [director] as being necessary. A course provider license may be issued after the complete required documents are approved.

(i) Renewal of course provider license. A complete application for the renewal of a license for a course provider shall be submitted before the expiration of the license and shall include the following:

(1) completed application for renewal;

(2) annual renewal fee, if applicable;

(3) a revised continuing education course for the next year;

(4) executed bond or executed continuation agreement for the bond currently approved by, and on file with, TEA; and

(5) any other revision or evidence of which the course provider has been notified in writing that is necessary to bring the course provider's application for a renewal license to a current and accurate status.

(j) Notification of legal action. A course provider shall notify the division [director] in writing of any legal action that is filed against the course provider, its officers, any owner, or any school instructor that might concern the operation of the course provider within five working days after the course provider becomes aware of the fact that the legal action has commenced or the legal process has been served. Included with the written notification, the course provider shall submit a file-marked copy of the petition or complaint that has been filed with the court.

(k) Course provider closure. ~~A [In reference to Texas Civil Statutes, Article 4413(29e), §9, a]~~ course provider owner shall notify TEA at least five [15] business days before the course provider closure. The course provider shall provide written notice of the actual discontinuance of the operation the day of cessation of business. A course provider shall make all records available for review to TEA within 30 days of the date the course provider ceases operation.

(l) Course providers and all course provider facilities must be located within the United States.

§176.1105. Driving Safety School and Course Provider Responsibilities.

(a) Course providers must be located, or maintain a registered agent, in the State of Texas. All instruction in a driving safety or specialized driving safety course shall be performed in locations approved by the Texas Education Agency (TEA) and by TEA-licensed instructors. However, a student instructor trainee may teach the 12 hours necessary for licensing in a TEA-approved location under the direction and in the presence of a licensed driving safety or specialized driving safety instructor trainer who has been trained in the curriculum being instructed. ~~[If a licensed instructor leaves the employment of any driving safety school, the school administrative staff member shall notify the course provider in writing within five days, indicating the name and license numbers of the school and the instructor, the termination date, and a statement about the termination. The course provider shall provide the information to TEA in writing within five working days of receipt of notification.]~~

(b) Each course provider or employee shall:

(1) ensure that instruction of the course is provided in schools currently approved to offer the course, and in the manner in which the course was approved;

(2) ensure that the course is provided by persons who have a valid current instructor license with the proper endorsement issued by the division, except as provided in subsection (a) of this section;

(3) ensure that schools and instructors are provided with the most recent approved course materials and relevant data and information pertaining to the course within 60 days of approval. Instructor training may be required and shall be addressed in the approval notice;

(4) not falsify driver training records;

(5) ensure that applications for licenses or approvals are forwarded to TEA within ten days of receipt at the course provider facilities;

(6) ensure that instructor performance is monitored. A written plan describing how instructor performance will be monitored and evaluated shall be provided to the schools. The plan shall identify the criteria upon which the instructors will be evaluated, the procedure for evaluation, the frequency of evaluation (a minimum of once a year), and the corrective action to be taken when instructors do not meet the criteria established by the course provider. The instructor evaluation forms must be kept on file either at the course provider or school location for a period of one year;

(7) develop and maintain a means to ensure the security and integrity of student information, especially financial and personal information, in transit and at rest; and

(8) develop and maintain a means to ensure the privacy of student data, including personal and financial data, and make the corporate privacy policy available to all course students.

(c) Each driving safety school owner-operator or employee shall:

(1) ensure that each individual permitted to give instruction at the school or any classroom location has a valid current instructor's license with the proper endorsement issued by the division, except as provided in subsection (a) of this section;

(2) prohibit an instructor from giving instruction or prohibit a student from securing instruction in the classroom or in a motor vehicle if that instructor or student is using or exhibits any evidence or effect of an alcoholic beverage, controlled substance, drug, abusable glue, aerosol paint, or other volatile chemical as those terms are defined in the Alcoholic Beverage Code, §1.04(1); and the Health and Safety Code, §§481.002, 484.002, and 485.001;

(3) provide instruction or allow instruction to be provided only in courses that are currently on the school's list of approved courses;

(4) complete, issue, or validate a verification of course completion only for a person who has successfully completed the entire course;

(5) not falsify driver training records;

(6) ensure that instructors give students the opportunity to evaluate the course and instructor on an official evaluation form;

(7) evaluate instructor performance in accordance with the course provider plan;

(8) develop and maintain a means to ensure the security and integrity of student information, especially financial and personal information, in transit and at rest; and

(9) develop and maintain a means to ensure the privacy of student data, including personal and financial data, and make the corporate privacy policy available to all course students.

(d) For the purposes of Texas Education Code, Chapter 1001 [Civil Statutes, Article 4413(29e)], and this chapter, each person employed by or associated with any driving safety school shall be deemed

an agent of the driving safety school, and the school may share the responsibility for all acts performed by the person which are within the scope of the employment and which occur during the course of the employment.

§176.1107. Driving Safety Instructor License.

(a) Application for licensing as a driving safety or specialized driving safety instructor shall be made on forms supplied by the Texas Education Agency (TEA). A person is qualified to apply for a driving safety or specialized driving safety instructor license who:

(1) is of good reputation; and

(2) holds a valid driver's [drivers] license for the preceding five years in the areas for which the individual is to teach, which has not been suspended, revoked, or forfeited in the past five years for traffic-related violations.

(b) A person applying for an original driving safety or specialized driving safety instructor's license shall submit to the course provider, who shall submit to TEA the following:

(1) complete application as provided by TEA;

(2) processing and annual instructor licensing fees;

(3) documentation showing that all applicable educational requirements have been met. Original documentation shall be provided upon the request of the division [director];

(4) a clear and legible photocopy of the current, valid driver's [drivers] license issued to the applicant; and

(5) any other information necessary to show compliance with applicable state and federal requirements.

(c) A person applying for a driving safety or specialized driving safety instructor license may qualify for the following endorsements.

(1) Driving safety instructor.

(A) The application shall include evidence of completion of 24 hours of training covering techniques of instruction and in-depth familiarization with material contained in the driving safety curriculum in which the individual is being trained and 12 hours of practical teaching in the same driving safety course and a statement signed by the course provider recommending the applicant for licensing. Alternatively, a currently licensed instructor may submit a copy of a current driving safety instructor license, a specialized driving safety instructor license, or a current driver education instructor license and evidence of 12 hours of training and six hours of demonstrative presentation teaching or practical teaching in the curriculum to be licensed. The 12 hours of training shall cover techniques of instruction and in-depth familiarization with material contained in the driving safety curriculum. The six hours of demonstrative presentation or practical teaching shall be in the driving safety curriculum and under the direct supervision of a licensed driving safety instructor trainer endorsed in the same driving safety curriculum and shall be accompanied by a statement signed by the course provider recommending the applicant for licensing.

(B) The responsibilities of a driving safety instructor include instructing a TEA-approved driving safety course specific to the curriculum in which the instructor is endorsed and for which the certificate is issued.

(2) Specialized driving safety instructor.

(A) The application shall include evidence of completion of 24 hours of training and 12 hours of practical teaching. The 24

hours of training shall cover techniques of instruction and in-depth familiarization with material contained in the specialized driving safety curriculum. The 12 hours of practical teaching shall be in the same specialized driving safety curriculum and shall be accompanied by a statement signed by the course provider recommending the applicant for licensing. Alternatively, the applicant may submit a copy of a current driving safety instructor license or current certification as a National Highway Traffic Safety Association Child Passenger Safety technician or instructor and 12 hours of training and six [42] hours of demonstrative presentation or practical teaching. The 12 hours of training shall cover techniques of instruction and in-depth familiarization with material contained in the specialized driving safety curriculum. The six [42] hours of demonstrative presentation or practical teaching shall be in the same specialized driving safety curriculum and under the direct supervision of a licensed specialized driving safety instructor trainer endorsed in the same specialized driving safety curriculum and shall be accompanied by a statement signed by the course provider recommending the applicant for licensing.

(B) The responsibilities of a specialized driving safety instructor include instructing a TEA-approved specialized driving safety course specific to the curriculum in which the instructor is endorsed and for which the certificate is issued.

(3) Driving safety instructor trainer.

(A) The application shall include a statement signed by the driving safety course provider (if different than the applicant) recommending the instructor as an instructor trainer and evidence of one of the following:

(i) a Texas teaching certificate with driver education endorsement and 30 [60] hours of experience, exclusive of the 36-hour instructor development course, in the same driving safety course for which the individual is to teach;

(ii) a teaching assistant certificate and 30 [60] hours of experience, exclusive of the 36-hour instructor development course, in the same driving safety course for which the individual is to teach; ~~[or]~~

(iii) completion of all the requirements of a driving safety instructor and 120 [150] hours of verifiable experience as a licensed driving safety instructor, of which the most recent 30 hours shall be in the same driving safety course for which the individual is to teach; ~~or[-]~~

(iv) proof of authorship of an approved driving safety course. The applicant who will provide the initial instructor training for a newly approved course shall demonstrate to the division director's designee the ability to teach the course prior to being licensed.

(B) The responsibilities of a driving safety instructor trainer include instructing a TEA-approved driving safety course, supervising instructor trainees, and signing as a driving safety instructor trainer for the records of practical teaching and/or demonstrative presentation [12 hours of practice teaching required] for driving safety instructor trainees.

(4) Specialized driving safety instructor trainer.

(A) The application shall include a statement signed by the driving safety course provider (if different than the applicant) recommending the instructor as an instructor trainer, a copy of a current certificate as a National Highway Traffic Safety Association Child Passenger Safety technician or instructor, and evidence of one of the following:

(i) a Texas teaching certificate with driver education endorsement and 30 [60] hours of experience, exclusive of the 36-hour instructor development course, in the same specialized driving safety course for which the individual is to teach;

(ii) a teaching assistant certificate and 30 [60] hours of experience, exclusive of the 36-hour instructor development course, in the same specialized driving safety course for which the individual is to teach;

(iii) completion of all the requirements for a specialized driving safety instructor license and 120 [150] hours of verifiable experience as a licensed driving safety instructor, of which the most recent 30 hours shall be in the same specialized driving safety course for which the individual is to teach; or

(iv) proof of authorship of an approved specialized driving safety course. The applicant who will provide the initial instructor training for a newly approved course shall demonstrate to the division director's designee the ability to teach the course prior to being licensed [completion of all the requirements for a specialized driving safety instructor license and 150 hours verifiable experience or an approved equivalent as a certified National Highway Traffic Safety Association Child Passenger Safety technician or instructor, of which the most recent 30 hours shall be in the same specialized driving safety course for which the individual is to teach].

(B) The responsibilities of a specialized driving safety instructor trainer include instructing a TEA-approved specialized driving safety course, supervising instructor trainees, and signing as a specialized driving safety instructor trainer for the records of practical teaching and/or demonstrative presentation [12 hours of practice teaching required] for the specialized driving safety instructor trainees.

(5) Instructor development course driving safety instructor trainer.

(A) The application shall include evidence of:

(i) completion of all the requirements for a driving safety instructor trainer plus an additional 60 hours of verifiable experience as a licensed driving safety instructor or driving safety instructor trainer [150 hours of verifiable experience as a licensed driving safety instructor, of which the most recent 60 hours shall be] in the same driving safety course for which the individual is to teach, or proof of authorship of an approved driving safety course. The applicant who will provide the initial instructor training for a newly approved course shall demonstrate to the division director's designee [director] the ability to teach the course prior to being licensed; and

(ii) a statement signed by the driving safety course provider, if different than the applicant, recommending the individual as an instructor development course instructor trainer in driving safety.

(B) The responsibilities of an instructor development course driving safety instructor trainer include instructing a TEA-approved driving safety course, supervising instructor trainees, training individuals to teach a TEA-approved driving safety course, and signing student instruction records and records of practical teaching and/or demonstrative presentation for driving safety trainees.

(6) Instructor development course specialized driving safety instructor trainer.

(A) The application shall include a copy of a current certification as a National Highway Traffic Safety Association Child Passenger Safety technician or instructor and evidence of:

(i) completion of all the requirements for a specialized driving safety instructor trainer plus an additional 60 hours of verifiable experience as a licensed specialized driving safety instructor or specialized driving safety instructor trainer ~~[150 hours of verifiable experience as a licensed specialized driving safety instructor, of which the most recent 60 hours shall be]~~ in the same specialized driving safety course for which the individual is to teach, or proof of authorship of an approved specialized driving safety course. The applicant who will provide the initial instructor training for a newly approved course shall demonstrate to the division director's designees the ability to teach the course prior to being licensed; and

(ii) a statement signed by the driving safety course provider, if different than the applicant, recommending the individual as an instructor development course instructor trainer in specialized driving safety.

(B) The responsibilities of an instructor development course specialized driving safety instructor trainer include instructing a TEA-approved specialized driving safety course, supervising instructor trainees, training individuals to teach a TEA-approved specialized driving safety course, and signing student instruction records and records of practical teaching and/or demonstrative presentation for specialized driving safety trainees.

(d) A renewal application for a driving safety or specialized driving safety instructor license must be prepared using the following procedures.

(1) Application for renewal of an instructor license shall be made on a form provided by TEA and submitted by the course provider. The annual instructor licensing fee and evidence of continuing education shall accompany the application.

(2) A complete license renewal application shall be post-marked or hand-delivered to the course provider by the instructor at least 30 days before the date of expiration or a late instructor renewal fee shall be imposed. A complete application includes:

(A) completed application for renewal;

(B) annual renewal fee; and

(C) evidence of continuing education for each driving safety or specialized driving safety course endorsement.

(e) Continuing education requirements include the following.

(1) Evidence of completion of continuing education shall be provided for each instructor during the individual license renewal period on forms approved by TEA. A verification form indicating completion shall be provided to TEA by the course provider on behalf of the instructors. The form shall be signed by the instructor receiving the training and the course provider or designee.

(2) Carryover credit of continuing education hours shall not be permitted.

(3) A licensee may not receive credit for attending the same course more than once during the same licensing period.

(4) A licensed individual who teaches an approved continuing education course may receive credit for attending continuing education.

(5) A driving safety or specialized driving safety continuing education course shall not be used for the continuing education requirement for a driver education instructor license.

(f) An instructor who has allowed a previous license to expire shall file an original application on a form provided by TEA that is submitted by the course provider. The application shall include the

processing and annual instructor licensing fees and evidence of continuing education completed within the last year. Evidence of educational experience may not be required to be resubmitted if the documentation is on file at TEA.

(g) All driving safety and specialized driving safety instructor license endorsement changes shall require the following:

(1) written documentation showing all applicable educational requirements have been met to justify endorsement changes;

(2) the annual instructor licensing fee; and

(3) completion of renewal requirements for current endorsements.

(h) All other license change requests, including duplicate instructor licenses or name changes, shall be made in writing by the course provider and shall include payment of the duplicate instructor license fee.

(i) The course provider shall notify the TEA of an instructor's change of address in writing. Address changes shall not require payment of a fee.

(j) All instructors shall notify the division ~~[director]~~, school owner, and course provider in writing of any criminal complaint other than a minor traffic violation filed against the instructor within five working days of commencement of the criminal proceedings. The division ~~[director]~~ may require a file-marked copy of the petition or complaint that has been filed with the court.

(k) All instructors shall provide training in an ethical manner so as to promote respect for the purposes and objectives of driver training as identified in Texas Civil Statutes, Article 4413(29c), §2 (Version's 2001).

(l) An instructor shall not make any sexual or obscene comments or gestures while performing the duties of an instructor.

(m) An instructor shall not falsify driver training records.

(n) The commissioner of education may suspend, revoke, or deny a license to any driving safety or specialized driving safety instructor trainer or instructor under any of the following circumstances.

(1) The applicant or licensee has been convicted of any felony, or an offense involving moral turpitude, or an offense of involuntary or intoxication manslaughter, or criminally negligent homicide committed as a result of the person's operation of a motor vehicle, or an offense involving driving while intoxicated or driving under the influence of drugs, or an offense involving tampering with a governmental record.

(A) These particular crimes relate to the licensing of instructors because such persons, as licensees of TEA, are required to be of good moral character and to deal honestly with courts and members of the public. Driving safety and specialized driving safety instruction involves accurate record keeping and reporting for court documentation and other purposes. In determining the present fitness of a person who has been convicted of a crime and whether a criminal conviction directly relates to an occupation, TEA shall consider those factors stated in Texas Occupations Code, Chapter 53 [Civil Statutes, Article 6252-13e and Article 6252-13d].

(B) In the event that an instructor is convicted of such an offense, the instructor's license will be subject to revocation or denial. A conviction for an offense other than a felony shall not be considered by TEA under this paragraph if a period of more than ten years has elapsed since the date of the conviction or of the release of the person from the confinement, conditional release, or suspension imposed for

that conviction, whichever is the later date. For seven years after an instructor is convicted of an offense involving driving while intoxicated, the instructor's license shall be recommended for revocation or denial.

(C) For the purposes of this paragraph, a person is convicted of an offense when a court of competent jurisdiction enters an adjudication of guilt on an offense against the person, whether or not:

(i) the sentence is subsequently probated and the person is discharged from probation; or

(ii) the person is pardoned for the offense, unless the pardon is expressly granted for subsequent proof of innocence.

(2) The applicant, licensee, any instructor, or agent is addicted to the use of alcoholic beverages or drugs or becomes incompetent to safely operate a motor vehicle or conduct classroom or behind-the-wheel instruction properly.

(3) The license was improperly or erroneously issued.

(4) The applicant or licensee fails to comply with the rules and regulations of TEA regarding the instruction of drivers in this state or fails to comply with any section of Texas Education Code, Chapter 1001 [Civil Statutes, Article 4413(29e)].

(5) The instructor fails to follow procedures as prescribed in this chapter.

(6) The applicant or licensee has a personal driving record showing that the person has been the subject of driver improvement or corrective action as cited in Transportation Code, Chapter 521, Subchapter N or O, during the past two years or that such action is needed to protect the students and motoring public.

(7) If an instructor or applicant has received deferred adjudication of guilt from a court of competent jurisdiction, a determination can be made upon satisfactory review of evidence that the conduct underlying the basis of the deferred adjudication has rendered the person unworthy to provide driver training instruction.

§176.1108. Driving Safety Courses of Instruction.

(a) This section contains requirements for driving safety, continuing education, and instructor development courses. For each course, the following curriculum documents and materials are required to be submitted as part of the application for approval. Except as provided by paragraph (1)(I) of this subsection, all course content shall be delivered under the direct observation of a licensed instructor. Any changes and updates to a course shall be submitted by the course provider and approved prior to being offered. Approval will be revoked for any course that meets the definition of inactive as defined in §176.1101 of this title (relating to Definitions). [Approval of any course that is inactive as of January 1, 2003, will be revoked.]

(1) Driving safety courses.

(A) Educational objectives. The educational objectives of driving safety courses shall include, but not be limited to: promoting respect for and encouraging observance of traffic laws and traffic safety responsibilities of drivers and citizens; reducing traffic violations; reducing traffic-related injuries, deaths, and economic losses; and motivating continuing development of traffic-related competencies.

(B) Driving safety course content guides. A course content guide is a description of the content of the course and the techniques of instruction that will be used to present the course. For courses offered in languages other than English, the course owner shall provide a copy of the student verification of course completion document and/or enrollment contract, student instructional materials, final exam,

and evaluation in the proposed language accompanied by a statement from an accredited translator that the materials are the same in both languages. To be approved, each course owner shall submit as part of the application a course content guide that includes the following:

(i) a statement of the course's traffic safety goal and philosophy;

(ii) a statement of policies and administrative provisions related to instructor conduct, standards, and performance;

(iii) a statement of policies and administrative provisions related to student progress, attendance, makeup, and conduct. The policies and administrative provisions shall be used by each school that offers the course and include the following requirements:

(I) progress standards that meet the requirements of subparagraph (F) of this paragraph;

(II) appropriate standards to ascertain the attendance of students. All schools approved to use the course must use the same standards for documenting attendance to include the hours scheduled each day and each hour not attended;

(III) if the student does not complete the entire course, including all makeup lessons, within the timeline specified by the court, no credit for instruction shall be granted;

(IV) any period of absence for any portion of instruction will require that the student complete that portion of instruction. All make-up lessons must be equivalent in length and content to the instruction missed and taught by a licensed instructor; and

(V) conditions for dismissal and conditions for reentry of those students dismissed for violating the conduct policy;

(iv) a statement of policy addressing entrance requirements and special conditions of students, such as the inability to read, language barriers, and other disabilities;

(v) a list of relevant instructional resources, such as textbooks, audio and visual media and other instructional materials, and equipment that will be used in the course; and the furniture deemed necessary to accommodate the students in the course, such as tables, chairs, and other furnishings. The course shall include a minimum of 60 minutes of audio/video materials relevant to the required topics [videos, including audio]; however, the audio/video materials shall not ~~[videos and other relevant instructional resources cannot]~~ be used in excess of 150 minutes of the 300 minutes of instruction. The resources may be included in a single list or may appear at the end of each instructional unit;

(vi) written or printed materials to [that shall] be provided for use by each student as a guide to the course. The division ~~[director]~~ may make exceptions to this requirement on an individual basis;

(vii) instructional activities to be used to present the material (lecture, films, other media, small-group discussions, workbook activities, written and oral discussion questions, etc.). When small-group discussions are planned, the course content guide shall identify the questions that will be assigned to the groups;

(viii) instructional resources for each unit;

(ix) techniques for evaluating the comprehension level of the students relative to the instructional unit. If oral or written questions are to be used to measure student comprehension levels, they shall be included in the course guide. The evaluative technique may be used throughout the unit or at the end; and

(x) a completed form cross-referencing the instructional units to the topics identified in subparagraph (D) of this paragraph. A form to cross-reference the instructional units to the required topics and topics unique to the course will be provided by the division.

(C) Course and time management. Approved driving safety courses shall be presented in compliance with the following guidelines.

(i) A minimum of 300 minutes of instruction is required.

(ii) The total length of the course shall consist of a minimum of 360 minutes.

(iii) Sixty minutes of time, exclusive of the 300 minutes of instruction, shall be dedicated to break periods or to the topics included in the minimum course content. All break periods shall be provided after instruction has begun and before the comprehensive exam and summation.

(iv) Administrative procedures, such as enrollment, shall not be included in the 300 minutes of the course.

(v) Courses conducted in a single day in a traditional classroom setting shall allow a minimum of 30 minutes for lunch; ~~which is exclusive of the total course length of 360 minutes~~].

(vi) Courses taught over a period longer than one day shall provide breaks on a schedule equitable to those prescribed for one-day courses. However, all breaks shall be provided after the course introduction and prior to the last unit of the instructional day or the comprehensive exam and summation, whichever is appropriate.

(vii) The order of topics shall be approved by Texas Education Agency (TEA) as part of the course approval, and for each student, the course shall be taught in the order identified in the approved application.

(viii) Students shall not receive a uniform certificate of course completion unless that student receives a grade of at least 70% on the final examination.

~~[(ix) The TEA shall produce and supply to course providers, at no cost to the course providers, copies of a short video that will provide information about the requirements for completing a six-hour driving safety course and the penalties involved for accepting a uniform certificate of course completion for a course that was not six hours in length. The course provider shall ensure that the video is shown to all students of each class prior to the final examination. Alternative methods for providing the required information to the students may be submitted by the course provider and approved at the discretion of the division director.]~~

~~[(ix) [(x)] In a traditional classroom setting, there must be sufficient seating for the number of students, arranged so that all students are able to view, hear, and comprehend all instructional aids and the class shall have no more than 50 students [per class are permitted in driving safety courses if any student in the class receives a uniform certificate of completion].~~

~~[(x) [(xi)] The driving safety instructor or school shall make a material effort to establish the identity of the student.~~

(D) Minimum course content. A driving safety course shall include, as a minimum, materials adequate to assure the student masters ~~[address] the following: [topics and to comply with the minimum time requirements for each unit and the course as a whole.]~~

(i) Course introduction--minimum of ten minutes (instructional objective--to orient students to the class). Instruction shall address the following topics:

- (I) purpose and benefits of the course;
- (II) course and facilities orientation;
- (III) requirements for receiving course credit;

~~[and]~~

(IV) student course evaluation procedures; ~~and~~[-]

(V) TEA-provided information on course content.

(ii) The traffic safety problem--minimum of 15 minutes (instructional objectives--to develop an understanding of the nature of the traffic safety problem and to instill in each student a sense of responsibility for its solution). Instruction shall address the following topics:

(I) identification of the overall traffic problem in the United States, Texas, and the locale where the course is being taught;

(II) death, injuries, and economic losses resulting from motor vehicle crashes in Texas; and

(III) five leading causes of motor vehicle crashes in Texas as identified by the Department of Public Safety (DPS).

(iii) Factors influencing driver performance--minimum of 20 minutes (instructional objective--to identify the characteristics and behaviors of drivers and how they affect driving performance). Instruction shall address the following topics:

(I) attitudes, habits, feelings, and emotions (aggressive driving, etc.);

(II) alcohol and other drugs;

(III) physical condition (drowsy driving, etc.);

(IV) knowledge of driving laws and procedures; and

(V) understanding the driving task.

(iv) Traffic laws and procedures--minimum of 30 minutes (instructional objectives--to identify the requirements of, and the rationale for, applicable driving laws and procedures and to influence drivers to comply with the laws on a voluntary basis). Instruction shall address the following topics:

(I) passing;

(II) right-of-way;

(III) turns;

(IV) stops;

(V) speed limits;

(VI) railroad crossings safety;

(-a-) statistics;

(-b-) causes; and

(-c-) evasive actions;

(VII) categories of traffic signs, signals, and highway markings;

(VIII) pedestrians;

(IX) improved shoulders;

(X) intersections;

(XI) occupant restraints;

(XII) anatomical gifts;

(XIII) litter prevention;

(XIV) law enforcement and emergency vehicles (this category will be temporary until the need is substantiated by documentation from the DPS on the number of deaths or injuries involved because of improper procedures used by a citizen when stopped by a law enforcement officer); and

(XV) other laws as applicable (i.e., financial responsibility/compulsory insurance).

(v) Special skills for difficult driving environments--minimum of 20 minutes (instructional objectives--to identify how special conditions affect driver and vehicle performance and identify techniques for management of these conditions). Instruction shall address the following topics:

(I) inclement weather;

(II) traffic congestion;

(III) city, urban, rural, and expressway environments;

(IV) reduced visibility conditions--hills, fog, curves, light conditions (darkness, glare, etc.), etc.; and

(V) roadway conditions.

(vi) Physical forces that influence driver control--minimum of 15 minutes (instructional objective--to identify the physical forces that affect driver control and vehicle performance). Instruction shall address the following topics:

(I) speed control (acceleration, deceleration, etc.);

(II) traction (friction, hydroplaning, stopping distances, centrifugal force, etc.); and

(III) force of impact (momentum, kinetic energy, inertia, etc.).

(vii) Perceptual skills needed for driving--minimum of 20 minutes (instructional objective--to identify the factors of perception and how the factors affect driver performance). Instruction shall address the following topics:

(I) visual interpretations;

(II) hearing;

(III) touch;

(IV) smell;

(V) reaction abilities (simple and complex); and

(VI) judging speed and distance.

(viii) Defensive driving strategies--minimum of 40 minutes (instructional objective--to identify the concepts of defensive driving and demonstrate how they can be employed by drivers to reduce the likelihood of crashes, deaths, injuries, and economic losses). Instruction shall address the following topics:

(I) trip planning;

(II) evaluating the traffic environment;

(III) anticipating the actions of others;

(IV) decision making;

(V) implementing necessary maneuvers;

(VI) compensating for the mistakes of other drivers;

(VII) avoiding common driving errors; and

(VIII) interaction with other road users (motorcycles, bicycles, trucks, pedestrians, etc.).

(ix) Driving emergencies--minimum of 40 minutes (instructional objective--to identify common driving emergencies and their countermeasures). Instruction shall address the following topics:

(I) collision traps (front, rear, and sides);

(II) off-road recovery, paths of least resistance; and

(III) mechanical malfunctions (tires, brakes, steering, power, lights, etc.).

(x) Occupant restraints and protective equipment--minimum of 15 minutes (instructional objective--to identify the rationale for having and using occupant restraints and protective equipment). Instruction shall address the following topics:

(I) legal aspects;

(II) vehicle control;

(III) crash protection;

(IV) operational principles (active and passive);

[and]

(V) helmets and other protective equipment; and[-]

(VI) dangers involved in locking or leaving children in vehicles unattended.

(xi) Alcohol and traffic safety--minimum of 40 minutes (instructional objective--to identify the effects of alcohol on roadway users). Instruction shall not address methods to drink and drive but shall address the following topics related to the effects of alcohol on roadway users:

(I) physiological effects;

(II) psychological effects;

(III) legal aspects; and

(IV) synergistic effects. [; and]

~~[(V) countermeasures.]~~

(xii) Comprehensive examination [~~and summation~~]-minimum of five [~~15~~] minutes (this shall be the last unit of instruction).

(xiii) The remaining 30 [~~required 20~~] minutes of instruction shall be allocated to the topics included in the minimum course content or to additional driving safety topics that satisfy the educational objectives of the course.

(E) Instructor training guides. An instructor training guide contains a description of the plan, training techniques, and curriculum to be used to train instructors to present the concepts of the approved driving safety course described in the applicant's driving safety course content guide. Each course provider shall submit as part of the application an instructor training guide that is bound or hole-punched

and placed in a binder and that has a cover and a table of contents. The guide shall include the following:

(i) a statement of the philosophy and instructional goals of the training course;

(ii) a description of the plan to be followed in training instructors. The plan shall include, as a minimum, provisions for the following:

(I) instruction of the trainee in the course curriculum;

(II) training the trainee in the techniques of instruction that will be used in the course;

(III) training the trainee about administrative procedures and course provider policies;

(IV) demonstration of desirable techniques of instruction by the instructor trainer;

(V) a minimum of 15 minutes of instruction of the course curriculum by the trainee under the observation of the instructor trainer as part of the basic training course;

(VI) time to be dedicated to each training lesson; and

(VII) a minimum of 600 minutes of instruction of the course in a regular approved course under the observation of a licensed instructor trainer. The instructor trainee shall provide instruction for two full courses. It is not mandatory that the two courses be taught as two complete courses; however, every instructional unit shall be taught twice; and

(iii) instructional units sufficient to address the provisions identified in clause (ii)(I) - (V) of this subparagraph. The total time of the units shall contain a minimum of 24 instructional hours. Each instructional unit shall include the following:

(I) the subject of the unit;

(II) the instructional objectives of the unit;

(III) time to be dedicated to the unit;

(IV) an outline of major concepts to be presented;

(V) instructional activities to be used to present the material (i.e., lecture, films, other media, small-group discussions, workbook activities, written and oral discussion questions). When small-group discussions are planned, the course guide shall identify the questions that will be assigned to the groups;

(VI) instructional resources for each unit; and

(VII) techniques for evaluating the comprehension level of the students relative to the instructional unit. If oral or written questions are to be used to measure student comprehension levels, they shall be included in the instructor training guide. The evaluative technique may be used throughout the unit or at the end.

(F) Examinations. Each course provider shall submit for approval, as part of the application, tests designed to measure the comprehension level of students at the completion of the driving safety course and the instructor training course. The comprehensive examination for each driving safety course must include at least two questions from the required units set forth in subparagraph (D)(ii) - (xi) of this paragraph for a total of at least 20 questions. The final examination questions shall be of such difficulty that the answer may not easily be determined without completing the actual instruction. Instructors shall not assist students in answering the final examination questions,

but may facilitate alternative testing. Instructors may not be certified or students given credit for the driving safety course unless they score 70% or more on the final test. The course content guide shall identify alternative testing techniques to be used for students with reading, hearing, or learning disabilities and policies for retesting students who score less than 70% on the final exam. The applicant may choose not to provide alternative testing techniques; however, students shall be advised whether the course provides alternative testing prior to enrollment in the course. Test questions may be short answer, multiple choice, essay, or a combination of these forms.

(G) Student course evaluation. Each student in a driving safety course shall be given an opportunity to evaluate the course and the instructor on an official evaluation form. A master copy of the evaluation form will be provided to TEA.

(H) State-level evaluation of driving safety courses. Each course provider shall collect adequate student data to enable TEA to evaluate the overall effectiveness of a course in reducing the number of violations and accidents of persons who successfully complete the course. The commissioner of education may determine a level of effectiveness that serves the purposes of Texas Education Code, Chapter 1001 [Civil Statutes, Article 4413(29e)].

(I) Requirements for authorship. The course materials shall be written by a TEA-licensed driver training instructor or other individuals or organizations with recognized experience in writing instructional materials with input from a TEA-licensed driving safety instructor.

(J) Renewal of course approval. The course approval must be renewed every two years. The renewal document due date shall be March 1, 2006, and every two years thereafter.

(i) For approval, the course owner shall update all the statistical data and references to law with the latest available data.

(ii) The course owner shall submit a Statement of Assurance stating that the course has been updated to reflect the latest applicable laws and statistics.

(iii) Failure to make necessary changes or to submit a Statement of Assurance documenting those changes shall be cause for revocation of the course approval.

(iv) The commissioner may alter the due date of the renewal documents by giving the approved course six months' notice. The commissioner may alter the due date in order to ensure that the course is updated six months after the effective date of new state laws passed by the Texas Legislature.

(2) Instructor development courses.

(A) If the alternative instructor training in §176.1107(c)(1) of this title (relating to Driving Safety Instructor License) is not applicable, driving [Driving] safety instructors shall successfully complete 36 clock hours (50 minutes of instruction in a 60-minute period) in the approved instructor development course for the driving safety course to be taught, under the supervision of a driving safety instructor trainer. Supervision is considered to have occurred when the instructor trainer is present and personally provides the 36 clock hours of training for driving safety instructors, excluding those clock hours approved by TEA staff that may be presented by a guest speaker or using films and other media that pertain directly to the concepts being taught.

(B) Instruction records shall be maintained by the course provider and instructor trainer for each instructor trainee and shall be available for inspection by authorized division representatives at any time during the training period and/or for license investigation

purposes. The instruction record shall include: the trainee's name, address, ~~driver's~~ ~~[drivers]~~ license number, and other pertinent data; the name and instructor license number of the person conducting the training; and the dates of instruction, lesson time, and subject taught during each instruction period. Each record shall also include grades or other means of indicating the trainee's aptitude and development. Upon satisfactory completion of the training course, the instructor trainer conducting the training will certify one copy of the instruction record for attachment to the trainee's application for licensing, and one copy will be maintained in a permanent file at the course provider location.

(C) All student instruction records submitted for the TEA-approved instructor development course shall be signed by the course provider. Original documents shall be submitted.

(D) Driving safety instructor development courses may be offered at approved classroom facilities of a licensed school which is approved to offer the driving safety course being taught. A properly licensed instructor trainer shall present the course.

(E) Applicants shall complete 36 hours of training in the driving safety curriculum that shall be taught. Of the 36 hours, 24 shall cover techniques of instruction and in-depth familiarization with materials contained in the driving safety curriculum. The additional 12 hours shall consist of practical teaching with students and shall occur after the first 24 hours have been completed.

(F) The driving safety course provider shall submit dates of instructor development course offerings for the 24-hour training that covers techniques of instruction and in-depth familiarization with the material contained in the driving safety curriculum, locations, class schedules, and scheduled instructor trainers' names and license numbers before the courses are offered. The 12-hour practical-teaching portion of the instructor development course shall be provided at properly licensed schools or classrooms approved to offer the course being provided.

(3) Continuing education courses.

(A) Continuing education requirements include the following.

(i) Each course provider will be responsible for receiving an approval for a minimum of a two-hour continuing education course. Each instructor currently endorsed to teach the course must attend the approved continuing education course conducted by the course provider.

(ii) The request for course approval shall contain the following:

(I) a description of the plan by which the course will be presented;

(II) the subject of each unit;

(III) the instructional objectives of each unit;

(IV) time to be dedicated to each unit;

(V) instructional resources for each unit, including names or titles of presenters and facilitators;

(VI) any information that TEA mandates to promote the ~~[ensure]~~ quality of the education being provided;

(VII) a plan by which the course provider will monitor and ensure attendance and completion of the course by the instructions within the guidelines set forth in the course; and

(VIII) a course evaluation form to be completed by each instructor attending the course. The course provider must maintain each instructor's completed evaluation form for one year.

(iii) A continuing education course may be approved if TEA determines that:

(I) the course is designed to enhance ~~[constitutes an organized program of learning that enhances]~~ the instructional skills, methods, or knowledge of the driving safety instructor;

(II) the course pertains to subject matters that relate directly to driving safety instruction, instruction techniques, or driving safety-related subjects;

(III) the ~~[entire]~~ course has been designed, planned, and organized by the course provider. The course provider shall use licensed driving safety instructors to provide instruction or other individuals with recognized experience or expertise in the area of driving safety instruction or driving safety-related subject matters. Evidence of the individuals' experience or expertise may be requested by the division ~~[director]~~; and

(IV) the course contains updates or approved revisions to the driving safety course curriculum, policies or procedures, and/or any changes to the course, that are affected by changes in traffic laws or statistical data.

(B) Course providers shall notify the division ~~[director]~~ of the scheduled dates, times, and locations of all continuing education courses ~~[no less than ten calendar days]~~ prior to the first day of class being held~~[, unless otherwise excepted by the division director]~~.

(b) Course providers shall submit documentation on behalf of schools applying for approval of additional courses after the original approval has been granted. The documents shall be designated by the division ~~[director]~~ and include the appropriate fee. Courses shall be approved before soliciting students, advertising, or conducting classes. An approval for an additional course shall not be granted if the school's compliance is in question at the time of application.

(c) If an approved course is discontinued, the division ~~[director]~~ shall be notified within five days ~~[72 hours]~~ of discontinuance and furnished with the names and addresses of any students who could not complete the course because it was discontinued. If the school does not make arrangements satisfactory to the students and the division ~~[director]~~ for the completion of the courses, the full amount of all tuition and fees paid by the students are due and refundable. If arrangements are not made satisfactory to the students and the division ~~[director]~~, the refunds must be made no later than 30 days after the course was discontinued. Any course discontinued shall be removed from the list of approved courses.

(d) If, upon review and consideration of an original, renewal, or amended application for course approval, the commissioner of education determines that the applicant does not meet the legal requirements, the commissioner shall notify the applicant, setting forth the reasons for denial in writing.

(e) The commissioner of education may revoke approval of any course given to a course owner, provider, or school under any of the following circumstances.

(1) Any information ~~[A statement]~~ contained in the application for the course approval is found to be untrue.

(2) The school has failed to maintain the faculty, facilities, equipment, or courses of study on the basis of which approval was issued.

(3) The school and/or course provider has been found to be in violation of Texas Education Code, Chapter 1001 [Civil Statutes, Article 4413(29e)], and/or this chapter.

(4) The course has been found to be ineffective in meeting the educational objectives set forth in subsection (a)(1)(A) of this section [carrying out the purpose of the Texas Driver and Traffic Safety Education Act].

§176.1109. Specialized Driving Safety Courses of Instruction.

(a) This section contains requirements for specialized driving safety courses, instructor development courses, and continuing education. For each course, the following curriculum documents and materials are required to be submitted as part of the application for approval. Except as provided by §176.1110 of this title (relating to Alternative Delivery Methods of Driving Safety Instruction), all course content shall be delivered under the direct observation of a specialized driving safety licensed instructor. Any changes and updates to a course shall be submitted and approved prior to being offered. Approval will be revoked for any course that meets the definition of inactive as defined in §176.1101 of this title (relating to Definitions).

(1) Specialized driving safety courses.

(A) Educational objectives. The educational objectives of specialized driving safety courses shall include, but not be limited to: improving the student's knowledge, compliance with, and attitude toward the use of child passenger safety seat systems and the wearing of seat belt and other occupant restraint systems.

(B) Specialized driving safety course content guides. A course content guide is a description of the content of the course and the techniques of instruction that will be used to present the course. For courses offered in languages other than English, the course owner shall provide a copy of the student verification of course completion document and/or contract, student instructional materials, final exam, and evaluation in the proposed language accompanied by a statement from an accredited translator that the materials are the same in both languages. To be approved, each course owner shall submit as part of the application a course content guide that includes the following:

(i) a statement of the course's goal and philosophy relative to occupant protection;

(ii) a statement of policies and administrative provisions related to instructor conduct, standards, and performance;

(iii) a statement of policies and administrative provisions related to student progress, attendance, makeup, and conduct. The policies and administrative provisions shall be used by each school that offers the course and include the following requirements:

(I) progress standards that meet the requirements of subparagraph (F) of this paragraph;

(II) appropriate standards to ascertain the attendance of students. All schools approved to use the course must use the same standards for documenting attendance to include the hours scheduled each day and each hour not attended;

(III) appropriate criteria to determine course completion. If the student does not complete the entire course, including all makeup lessons, within the timeline specified by the court, no credit for instruction shall be granted;

(IV) provisions for the completion of make-up work. Any period of absence for any portion of instruction will require that the student complete that portion of instruction. All make-up lessons must be equivalent in length and content to the instruction missed and taught by a licensed instructor; and

(V) conditions for dismissal and conditions for reentry of those students dismissed for violating the conduct policy;

(iv) a statement of policy addressing entrance requirements and special conditions of students, such as the inability to read, language barriers, and other disabilities;

(v) a list of relevant instructional resources, such as textbooks, audio and visual media and other instructional materials, and equipment that will be used in the course; and the furniture deemed necessary to accommodate the students in the course, such as tables, chairs, and other furnishings. The course shall include a minimum of 60 minutes of audio/video materials relevant to the required topics [videos, including audio]; however, the audio/video materials shall not [videos and other relevant instructional resources cannot] be used in excess of 150 minutes of the 300 minutes of instruction. The resources may be included in a single list or may appear at the end of each instructional unit;

(vi) written or printed materials [that shall be] provided for use by each student as a guide to the course. The division [director] may make exceptions to this requirement on an individual basis;

(vii) instructional activities to be used to present the material (lecture, films, other media, small-group discussions, workbook activities, written and oral discussion questions, etc.). When small-group discussions are planned, the course content guide shall identify the questions that will be assigned to the groups;

(viii) instructional resources for each unit;

(ix) techniques for evaluating the comprehension level of the students relative to the instructional unit. If oral or written questions are to be used to measure student comprehension levels, they shall be included in the course guide. The evaluative technique may be used throughout the unit or at the end; and

(x) a completed form cross-referencing the instructional units to the topics identified in subparagraph (D) of this paragraph. A form to cross-reference the instructional units to the required topics and topics unique to the course will be provided by the division.

(C) Course and time management. Approved specialized driving safety courses shall be presented in compliance with the following guidelines.

(i) A minimum of 300 minutes of instruction is required of which at least 200 minutes shall address the use of child passenger safety seat systems and the wearing of seat belt and other occupant restraint systems.

(ii) The total length of the course shall consist of a minimum of 360 minutes.

(iii) Sixty minutes of time, exclusive of the 300 minutes of instruction, shall be dedicated to break periods or to the topics included in the minimum course content. All break periods shall be provided after instruction has begun and before the comprehensive examination and summation.

(iv) Administrative procedures, such as enrollment, shall not be included in the 300 minutes of the course.

(v) Courses conducted in a single day in a traditional classroom setting shall allow a minimum of 30 minutes for lunch[which is exclusive of the total course length of 360 minutes].

(vi) Courses taught over a period longer than one day shall provide breaks on a schedule equitable to those prescribed for one-day courses. However, all breaks shall be provided after the course

introduction and prior to the last unit of the instructional day or the comprehensive examination and summation, whichever is appropriate.

(vii) The order of topics shall be approved by Texas Education Agency (TEA) as part of the course approval, and for each student, the course shall be taught in the order identified in the approved application.

(viii) Students shall not receive a uniform certificate of course completion unless that student receives a grade of at least 70% on the final examination.

(ix) Specialized driving safety classrooms must have sufficient seating for the number of students, arranged so that all students are able to view, hear, and comprehend all instructional aids and the class shall have no more than 50 students.

~~{(ix) No more than 50 students per class are permitted.}~~

(x) The specialized driving safety instructor or school shall make a material effort to establish the identity of the student.

(D) Minimum course content. A specialized driving safety course shall include, as a minimum, four hours of instruction that encourages the use of child passenger safety seat systems and the wearing of seat belts, etc., and materials adequate to assure the student masters [address] the following: [topics and to comply with the minimum time requirements for the course as a whole.]

(i) Course introduction--minimum of ten minutes (instructional objective--to orient students to the class). Instruction shall address the following topics:

- (I) purpose and benefits of the course;
 - (II) course and facilities orientation;
 - (III) requirements for receiving course credit;
- and
- (IV) student course evaluation procedures.

(ii) The occupant protection problem--minimum of 15 minutes (instructional objectives--to develop an understanding of Texas occupant protection laws and the national and state goals regarding occupant protection). Instruction shall address the following topics:

- (I) identification of Texas Occupant Protection Laws;
- (II) deaths, injuries and economic losses related to improper use of occupant restraint systems; and
- (III) national and state goals regarding occupant protection.

(iii) Factors influencing driver performance--(instructional objective--to identify the characteristics and behaviors of drivers and how they affect driving performance). Instruction shall address the following topics:

- (I) attitudes, habits, feelings, and emotions;
 - (II) alcohol and other drugs;
 - (III) physical condition;
 - (IV) knowledge of driving laws and procedures;
- and
- (V) understanding the driving task.

(iv) Physical forces that influence driver control--(instructional objective--to identify the physical forces that affect driver control and vehicle performance). Instruction shall address the following topics:

- (I) speed control (acceleration, deceleration, etc.);
- (II) traction (friction, hydroplaning, stopping distances, centrifugal force, etc.); and
- (III) force of impact (momentum, kinetic energy, inertia, etc.).

(v) Perceptual skills needed for driving--(instructional objective--to identify the factors of perception and how the factors affect driver performance). Instruction shall address the following topics:

- (I) visual interpretations;
- (II) hearing;
- (III) touch;
- (IV) smell;
- (V) reaction abilities (simple and complex); and
- (VI) judging speed and distance.

(vi) Occupant protection equipment--minimum of 25 minutes (instructional objective--to identify the improvements and technological advances in automotive design and construction). Instruction shall address the following topics:

- (I) anti-lock brakes;
- (II) traction control devices;
- (III) suspension control devices;
- (IV) electronic stability/active handling systems;
- (V) crumple zones;
- (VI) door latch improvements;
- (VII) tempered or safety glass;
- (VIII) headlights; and
- (IX) visibility enhancements.

(vii) Occupant restraint systems--minimum of 40 minutes (instructional objective--to identify the rationale for having and using occupant restraints and protective equipment). Instruction shall address the following topics:

- (I) safety belts, airbags, and other protective equipment;
- (II) proper usage and necessary precautions;
- (III) vehicle control and driver stability;
- (IV) crash dynamics and protection; and
- (V) operational principles (active versus passive).

(viii) Child passenger safety--minimum of 120 minutes (instructional objective--to understand the child passenger safety law in Texas; the importance of child safety seats; and the risks to children that are unrestrained or not properly restrained). Instruction shall address the following topics:

(I) misconceptions or mistaken ideas regarding child passenger safety;

(II) purpose of child safety seats;

(III) how to secure the child properly and factors to consider;

(IV) child safety seat types and parts;

(V) precautions regarding child safety seats;

(VI) correct installation of a child safety restraint system; ~~and~~

(VII) tips regarding child safety restraint systems; ~~and~~[-]

(VIII) dangers involved in locking or leaving children in vehicles unattended.

(ix) Comprehensive examination ~~and summation~~--minimum of five ~~[15]~~ minutes (this shall be the last unit of instruction).

(x) The remaining 30 ~~[required 20]~~ minutes of instruction shall be allocated to the topics included in the minimum course content or to additional occupant protection topics that satisfy the educational objectives of the course.

(E) Instructor training guides. An instructor training guide contains a description of the plan, training techniques, and curriculum to be used to train instructors to present the concepts of the approved specialized driving safety course described in the applicant's specialized driving safety course content guide. Each course provider shall submit as part of the application an instructor training guide that is bound or hole-punched and placed in a binder and that has a cover and a table of contents. The guide shall include the following:

(i) a statement of the philosophy and instructional goals of the training course;

(ii) a description of the plan to be followed in training instructors. The plan shall include, as a minimum, provisions for the following:

(I) instruction of the trainee in the course curriculum;

(II) training the trainee in the techniques of instruction that will be used in the course;

(III) training the trainee about administrative procedures and course provider policies;

(IV) demonstration of desirable techniques of instruction by the instructor trainer;

(V) a minimum of 15 minutes of instruction of the course curriculum by the trainee under the observation of the instructor trainer as part of the basic training course;

(VI) time to be dedicated to each training lesson; and

(VII) a minimum of 600 minutes of instruction of the course in a regular approved course under the observation of a licensed specialized driving safety instructor trainer. The instructor trainee shall provide instruction for two full courses. It is not mandatory that the two courses be taught as two complete courses; however, every instructional unit shall be taught twice; and

(iii) instructional units sufficient to address the provisions identified in clause (ii)(I) - (V) of this subparagraph. The total

time of the units shall contain a minimum of 24 instructional hours. Each instructional unit shall include the following:

(I) the subject of the unit;

(II) the instructional objectives of the unit;

(III) time to be dedicated to the unit;

(IV) an outline of major concepts to be presented;

(V) instructional activities to be used to present the material (i.e., lecture, films, other media, small-group discussions, workbook activities, written and oral discussion questions). When small-group discussions are planned, the course guide shall identify the questions that will be assigned to the groups;

(VI) instructional resources for each unit; and

(VII) techniques for evaluating the comprehension level of the students relative to the instructional unit. If oral or written questions are to be used to measure student comprehension levels, they shall be included in the instructor training guide. The evaluative technique may be used throughout the unit or at the end.

(F) Examinations. Each course provider shall submit for approval, as part of the application, tests designed to measure the comprehension level of students at the completion of the specialized driving safety course and the instructor training course. The comprehensive examination for each specialized driving safety course must include at least two questions from each unit, excluding the course introduction and comprehensive examination units. The final examination questions shall be of such difficulty that the answer may not easily be determined without completing the actual instruction. Instructors shall not assist students in answering the final examination questions unless alternative testing is required. Instructors may not be certified or students given credit for the specialized driving safety course unless they score 70% or more on the final test. The course content guide shall identify alternative testing techniques to be used for students with reading, hearing, or learning disabilities and policies for retesting students who score less than 70% on the final exam. The applicant may choose not to provide alternative testing techniques; however, students shall be advised whether the course provides alternative testing prior to enrollment in the course. Test questions may be short answer, multiple choice, essay, or a combination of these forms.

(G) Student course evaluation. Each student in a specialized driving safety course shall be given an opportunity to evaluate the course and the instructor on an official evaluation form. A master copy of the evaluation form will be provided to TEA.

(H) State-level evaluation of specialized driving safety courses. Each course provider shall collect adequate student data to enable TEA to evaluate the overall effectiveness of a course in reducing the number of violations and accidents of persons who successfully complete the course. The commissioner of education may determine a level of effectiveness that serves the purposes of Texas Education Code, Chapter 1001 [Civil Statutes, Article 4413(29e)].

(I) Requirements for authorship. The course shall be authored by a TEA-licensed driver training instructor who possesses a current National Highway Traffic Safety Association Child Passenger Safety technician or instructor certificate.

(2) Specialized driving safety instructor development courses.

(A) If the alternative instructor training in §176.1107(c)(2) of this title (relating to Driving Safety Instructor License) is not applicable, specialized [Specialized] driving safety instructors shall successfully complete 36 clock hours (50 minutes of

instruction in a 60-minute period) in the approved instructor development course for the specialized driving safety course to be taught, under the supervision of a specialized driving safety instructor trainer. Supervision is considered to have occurred when the instructor trainer is present and personally provides the 36 clock hours of training for the instructors, excluding those clock hours approved by TEA staff that may be presented by a guest speaker or using films and other media that pertain directly to the concepts being taught.

(B) Instruction records shall be maintained by the course provider and instructor trainer for each instructor trainee and shall be available for inspection by authorized division representatives at any time during the training period and/or for license investigation purposes. The instruction record shall include: the trainee's name, address, driver's ~~[drivers]~~ license number, and other pertinent data; the name and instructor license number of the person conducting the training; and the dates of instruction, lesson time, and subject taught during each instruction period. Each record shall also include grades or other means of indicating the trainee's aptitude and development. Upon satisfactory completion of the training course the instructor trainer conducting the training will certify one copy of the instruction record for attachment to the trainee's application for licensing and one copy will be maintained in a permanent file at the course provider location.

(C) All student instruction records submitted for the TEA-approved specialized driving safety instructor development course shall be signed by the course provider. Original documents shall be submitted.

(D) Specialized driving safety instructor development courses may be offered at approved classroom facilities of a licensed school which is approved to offer the specialized course being taught. A properly licensed instructor trainer shall present the course.

(E) Applicants shall complete 36 hours of training in the specialized driving safety curriculum that shall be taught. Of the 36 hours, 24 shall cover techniques of instruction and in-depth familiarization with materials contained in the specialized driving safety curriculum. The additional 12 hours shall consist of practical teaching with students and shall occur after the first 24 hours have been completed.

(F) The course provider shall submit dates of instructor development course offerings for the 24-hour training that covers techniques of instruction and in-depth familiarization with the material contained in the specialized driving safety curriculum, locations, class schedules, and scheduled instructor trainers' names and license numbers before the courses are offered. The 12-hour practical-teaching portion of the instructor development course shall be provided at properly licensed schools or classrooms approved to offer the course being provided.

(3) Continuing education courses.

(A) Continuing education requirements include the following.

(i) Each course provider will be responsible for receiving an approval for a minimum of a two-hour continuing education course. Each instructor currently endorsed to teach the course must attend the approved continuing education course conducted by the course provider.

(ii) The request for course approval shall contain the following:

(I) a description of the plan by which the course will be presented;

(II) the subject of each unit;

(III) the instructional objectives of each unit;

(IV) time to be dedicated to each unit;

(V) instructional resources for each unit, including names or titles of presenters and facilitators;

(VI) any information that TEA mandates to ensure quality of the education being provided;

(VII) a plan by which the course provider will monitor and ensure attendance and completion of the course by the instructors within the guidelines set forth in the course; and

(VIII) a course evaluation form to be completed by each instructor attending the course. The course provider must maintain each instructor's completed evaluation form for one year.

(iii) A continuing education course may be approved if TEA determines that:

(I) the course constitutes an organized program of learning that enhances the instructional skills, methods, or knowledge of the specialized driving safety instructor;

(II) the course pertains to subject matters that relate directly to driving safety or specialized driving safety instruction, instruction techniques, or driving safety-related subjects;

(III) the entire course has been designed, planned, and organized by the course provider. The course provider shall use licensed driving safety or specialized driving safety instructors to provide instruction or other individuals with recognized experience or expertise in the area of driving safety or specialized driving safety instruction or driving safety-related subject matters. Evidence of the individuals' experience or expertise may be requested by the division ~~[director]~~; and

(IV) the course contains updates or approved revisions to the specialized driving safety course curriculum, policies or procedures, and/or any changes to the course, that are affected by changes in traffic laws or statistical data.

(B) Course providers shall notify the division ~~[director]~~ of the scheduled dates, times, and locations of all continuing education courses prior to the first day of class ~~[no less than ten calendar days prior to the class being held, unless otherwise excepted by the division director]~~.

(b) Course providers shall submit documentation on behalf of schools applying for approval of additional courses after the original approval has been granted. The documents shall be designated by the division ~~[director]~~ and include the appropriate fee. Courses shall be approved before soliciting students, advertising, or conducting classes. An approval for an additional course shall not be granted if the school's compliance is in question at the time of application.

(c) If an approved course is discontinued, the division ~~[director]~~ shall be notified within five days ~~[72 hours]~~ of discontinuance and furnished with the names and addresses of any students who could not complete the course because it was discontinued. If the school does not make arrangements satisfactory to the students and the division ~~[director]~~ for the completion of the courses, the full amount of all tuition and fees paid by the students are due and refundable. If arrangements are not made satisfactory to the students and the division ~~[director]~~, the refunds must be made no later than 30 days after the course was discontinued. Any course discontinued shall be removed from the list of approved courses.

(d) If, upon review and consideration of an original, renewal, or amended application for course approval, the commissioner of education determines that the applicant does not meet the legal requirements, the commissioner shall notify the applicant, setting forth the reasons for denial in writing.

(e) The commissioner of education may revoke approval of any course given to a course owner, provider, or school under any of the following circumstances.

(1) Any information [A statement] contained in the application for the course approval is found to be untrue.

(2) The school has failed to maintain the faculty, facilities, equipment, or courses of study on the basis of which approval was issued.

(3) The school and/or course provider has been found to be in violation of Texas Education Code, Chapter 1001 [Civil Statutes, Article 4413(29e)], and/or this chapter.

(4) The course has been found to be ineffective in meeting the educational objectives set forth in subsection (a)(1)(A) of this section [carrying out the purpose of the Texas Driver and Traffic Safety Education Act].

§176.1110. Alternative Delivery Methods of Driving Safety Instruction.

(a) Approval process. The commissioner of education may approve an alternative delivery method (ADM) that delivers an approved driving safety course or an approved specialized driving course and meets the following requirements.

(1) Standards for approval. The commissioner of education may approve an ADM for an approved driving safety course or a specialized driving safety course and waive any rules to accomplish this approval if the ADM delivers an approved course in a manner that is at least as secure as a traditional classroom. ADMs that meet the requirements outlined in subsections (b) - (h) of this section shall receive ADM approval.

(2) Application. The course provider shall submit a completed ADM application along with the appropriate fee. The application for ADM approval shall be treated the same as an application for the approval of a new course and the ADM must deliver the course provider's approved curriculum as delineated in the course content guide required by §176.1108(a)(1)(B) of this title (relating to Driving Safety Courses of Instruction).

(3) Incomplete applications. An application that is incomplete may be returned to the applicant along with the application fee.

(4) School license required. A person or entity offering a driving safety course or a specialized driving course to Texas students by an alternative delivery method must hold a driving safety school license. The driving safety school is responsible for the operation of the ADM.

(5) Course provider endorsement required. The driving safety school must have an endorsement from a licensed course provider.

(b) Course content. The ADM must deliver the same topics and course content as the approved course.

(1) Course topics. The time requirements for each unit and the course as a whole described in §176.1108(a)(1)(C) and (D) of this title and §176.1109(a)(1)(C) and (D) of this title (relating to Specialized Driving Safety Courses of Instruction) shall be met.

(2) Topic sequence. The ADM sequencing may be different from the approved traditional course as long as the sequencing does not detract from educational value of the course. The ADM owner shall provide a key showing the topic sequence of the traditional course and where the corresponding information appears in the ADM.

(3) Editing. The material presented in the ADM shall be edited for grammar, punctuation, and spelling and be of such quality that it does not detract from the subject matter.

(4) Irrelevant material. Advertisement of goods and services shall not appear during the actual instructional times of the course. Distracting material that is not related to the topic being presented shall not appear during the actual instructional times of the course.

(5) Minimum content. The ADM shall present sufficient content so that it would take a student 300 minutes to complete the course. In order to demonstrate that the ADM contains sufficient content, the ADM shall use the following methods.

(A) Word count. For written material that is read by the student, the course provider shall count the total number of words in the written sections of the course. This word count shall be divided by 180, the average number of words that a typical student reads per minute. The result is the time associated with the written material for the sections.

(B) Multimedia presentations. For multimedia presentation, the course provider shall calculate the total amount of time it takes for all multimedia presentations to play.

(C) Charts and graphs. The ADM may assign one minute for each chart or graph.

(D) Examinations. The course provider may allocate up to 90 seconds for questions presented over the Internet and 30 seconds for questions presented by telephone.

(E) Total time calculation. If the sum of the time associated with the written course material, the total amount of time for all multimedia presentations, and the time associated with all charts and graphs equals or exceeds 300 minutes, the ADM has demonstrated the required amount of content.

(F) Alternate time calculation method. In lieu of the time calculation method, the ADM may submit alternate methodology to demonstrate that the ADM meets the 300-minute requirement.

(6) Student breaks. A course that demonstrates that it contains 300 minutes of instructional content shall mandate that students take 60 minutes of break time or provide additional educational content for a total of 360 minutes.

(c) Personal validation. The ADM shall maintain a system to validate the identity of the person taking the course. The personal validation system shall incorporate the following requirements.

(1) Personal validation questions. The ADM shall ask a minimum of 10 personal validation questions throughout the course.

(2) Third party data sources. The personal validation questions shall be drawn equally from at least two different databases.

(3) Time to respond. The student must correctly answer the personal validation question within 90 seconds for questions presented over the Internet and 30 seconds for questions presented by telephone.

(4) Placement of questions. At least one personal validation question shall appear in each major unit or section, not including the final examination.

(5) Exclusion from the course. The ADM shall exclude the student from the course after the student has incorrectly answered more than 30 percent of the personal validation questions.

(6) Correction of answer. The school may correct an answer to a personal validation question for a student who inadvertently missed a personal validation question. In such a case, the student record shall include a record of both answers and an explanation of the reasons that the school corrected the answer.

(7) Student affidavits. A student for whom third-party database information is available from fewer than two databases (for example, a student with an out-of-state driver's license) may be issued a uniform certificate of completion upon presentation to the course provider of a notarized copy of the student's driver's license or equivalent type of photo identification and a statement from the student certifying that the individual attended and successfully completed the six-hour driving safety or specialized driving safety course for which the certificate is being issued and for which there exists a corresponding student record.

(8) Alternative methods. Upon approval by the Texas Education Agency (TEA), the ADM may use alternate methods that are at least as secure as the personal validation question method.

(d) Content validation. The ADM shall incorporate a course content validation process that verifies student participation and comprehension of course material, including the following.

(1) Timers. The ADM shall include built-in timers to ensure that 300 minutes of instruction have been attended and completed by the student.

(2) Testing the student's participation in multimedia presentations. The ADM shall ask at least one course validation question following each multimedia clip of more than 60 seconds.

(A) Test bank. For each multimedia presentation that exceeds 60 seconds, the ADM shall have a test bank of at least four questions.

(B) Question difficulty. The question shall be short answer, multiple choice, essay, or a combination of these forms. The question shall be difficult enough that the answer may not be easily determined without having viewed the actual multimedia clip.

(C) Failure criteria. If the student fails to answer the question correctly, the ADM shall either require the student view the multimedia clip again or the ADM shall fail the student from the course. If the ADM requires the student to view the multimedia clip again, the ADM shall present a different question from its test bank for that multimedia clip. The ADM may not repeat a question until it has asked all the questions from its test bank.

(D) Answer identification. The ADM shall not identify the correct answer to the multimedia question.

(3) Mastery of course content. The ADM shall test the student's mastery of the course content by asking at least two questions from each of the 11 topics listed in §176.1108(a)(1)(D) of this title.

(A) Test bank. The test bank for course content mastery questions shall include at least ten questions from each of the ten topics identified in §176.1108(a)(1)(D) of this title.

(B) Placement of questions. The mastery of course content questions shall be asked either at the end of the major unit or section in which the topic identified in §176.1108(a)(1)(D) of this title is covered (unit examination) or at the end of the course (comprehensive final examination).

(C) Question difficulty. Course content mastery questions shall be short answer, multiple choice, essay, or a combination of these forms, and of such difficulty that the answer may not be easily determined without having participated in the actual instruction.

(4) Repeat and re-test options. The ADM may use either of the following options for students who fail an examination to show mastery of course content, but may not use both in the same ADM.

(A) Repeat the failed unit. If the student misses more than 30% of the questions asked on an examination, the ADM shall require that the student go back and take the unit again. All timers shall be reset. The correct answer to missed questions may not be disclosed to the student (except as part of course content). At the end of the unit, the ADM shall again test the student's mastery of the material. The ADM shall present different questions from its test bank until all the applicable questions have been asked. The student may repeat this procedure an unlimited number of times.

(B) Re-test the student. If the student misses more than 30% of the questions asked on an exam, the ADM shall retest the student in the same manner as the failed examination, using different questions from its test bank. The student is not required to repeat the failed unit, but may be allowed to do so prior to retaking the exam. If the student fails the same unit examination or the comprehensive final examination three times, the student shall fail the course.

(e) Student records. The ADM shall provide for the creation and maintenance of the records documenting student enrollment, the verification of the student's identity, and the testing of the student's mastery of the course material. The student records shall contain the following information.

(1) The student's name and driver's license number.

(2) A record of which personal validation questions were asked and the student's responses.

(3) A record of which multimedia participation questions were asked and the student's responses.

(4) The name or identity number of the staff member entering comments, retesting, or revalidating the student.

(5) If any answer to a question is changed by the school or course provider for a student who inadvertently missed a question, the school or course provider shall provide both answers and a reasonable explanation for the change.

(6) A record of the course content mastery questions asked and the answers given.

(7) A record of the time the student spent in each unit of the ADM and the total instructional time the student spent in the course.

(8) The school shall also ensure that the student record is readily, securely, and reliably available for inspection by TEA or a TEA-authorized representative.

(f) Additional requirements for Internet courses. Courses delivered via the Internet shall also comply with the following requirements.

(1) Re-entry into the course. An ADM may allow the student re-entry into the course by username and password authentication or other means that are as secure as username and password authentication.

(2) Navigation. The student shall be able to logically navigate through the course. The student shall be allowed to freely browse previously completed material.

(3) Audio-visual standards. The video and audio shall be clear and, when applicable, the video and audio shall be synchronized.

(4) Video transcripts. If the ADM presents transcripts of a video presentation, the transcript shall be delivered concurrently with the video stream so that the transcript cannot be displayed if the video does not display on the student's computer.

(5) Domain names. Each school offering an ADM must offer that ADM from a single domain. The ADM may accept students that are redirected to the ADM's domain, as long as the student is redirected to a web page that clearly identifies the course provider and school offering the ADM before the student begins the registration process, supplies any information, or pays for the course. Subdomains of the ADM's single domain may also accept students as long as the subdomain is registered to and hosted by the ADM and clearly identifies the official course provider, school name, and TEA registration number.

(g) Additional requirements for video courses.

(1) Delivery of the material. For ADMs delivered by the use of videotape, digital video disc (DVD), film, or similar media, the equipment and course materials may only be made available through a process that is approved by TEA.

(2) Video requirement. In order to meet the video requirement of §176.1108(a)(1)(B)(v) of this title, the video course may include between 60 and 150 minutes of video that is relevant to the required topics such as video produced by other entities for training purposes, including public safety announcements and B roll footage. The remainder of the 300 minutes of required instruction shall be video material that is relevant to one of the 11 required topics and produced by the ADM owner, course owner, or course provider specifically for the ADM.

(A) A video ADM shall ask, at a minimum, at least one course validation question for each multimedia clip of more than 60 seconds at the end of each major segment (chapter) of the ADM.

(B) A video ADM shall devise and submit for approval a method for ensuring that a student correctly answers questions concerning the multimedia clips of more than 60 seconds presented during the ADM.

(h) Standards for ADMs using new technology. For ADMs delivered using technologies that have not been previously reviewed and approved by TEA, TEA may apply similar standards as appropriate and may also require additional standards. These standards shall be designed to ensure that the course can be taught by the alternative method and that the alternative method includes testing and security measures that are at least as secure as the methods available in the traditional classroom setting.

(i) Modifications to the ADM. Except as provided by paragraph (1) of this subsection, a change to a previously approved ADM shall not be made without the prior approval of TEA. The licensed course provider for the approved course on which the ADM is based shall ensure that any modification to the ADM is implemented by all schools endorsed to offer the ADM.

(1) A course provider may submit to the TEA a request for immediate implementation of a proposed change that is insignificant or that protects the interest of the consumer such that immediate implementation is warranted. The request shall include:

(A) a complete description of the proposed change;

(B) the reason for the change;

(C) the reason the requestor believes the proposed change is insignificant or protects the interest of the consumer such that immediate implementation is warranted; and

(D) an explanation of how the change will maintain the course or ADM in compliance with state law and the rules specified in this chapter.

(2) The TEA may request additional information regarding a proposed change from the course provider making a request under paragraph (1) of this subsection.

(3) The TEA will respond to any request made under paragraph (1) of this subsection within five working days of receipt.

(A) If the TEA determines that the proposed change is insignificant or protects the interest of the consumer such that immediate implementation is warranted, the requestor may immediately implement the change. The licensed course provider for the approved course on which the ADM is based shall ensure that the change is implemented by all schools endorsed to offer the ADM.

(B) If the TEA determines that the proposed change is neither insignificant nor protects the interest of the consumer such that immediate implementation is warranted, the TEA shall notify the requestor of that determination and the change may not be made unless the TEA approves the change following a complete review.

(4) A determination by the TEA to allow immediate implementation under paragraph (1) of this subsection does not constitute final approval by the TEA of the change. The TEA reserves the right to conduct further review after the change is implemented and to grant or deny final approval based on whether the change complies with state law and rules specified in this chapter.

(5) If, following further review, a change in an ADM that has been immediately implemented pursuant to paragraph (1) of this subsection is determined not to be in compliance with state law and rules specified in this chapter, the TEA:

(A) shall notify the course provider affected by the change of:

(i) the specific provisions of state law or rules with which the ADM change is not in compliance; and

(ii) a reasonable date by which the ADM must be brought into compliance;

(B) shall require the course provider to notify any school endorsed by the course provider of the finding;

(C) shall not, for the period between the implementation of the change and the date specified under subparagraph (A)(ii) of this paragraph:

(i) seek any penalty relating to the non-compliance;

(ii) take any action to revoke or deny renewal of a license of a school or course provider based on the change; or

(iii) withdraw approval of a course or ADM based on the change; and

(D) is not required to specify the method or manner by which the course provider alters the ADM to come into compliance with state law and the rules in this chapter.

(6) If the TEA allows immediate implementation pursuant to paragraph (1) of this subsection and later determines that the description of the change or the request was misleading, materially inaccurate, not substantially complete, or not made in good faith, paragraph (5)(C) of this subsection does not apply.

(7) A course provider who immediately implements a change pursuant to paragraph (1) of this subsection and fails to bring the ADM into compliance prior to the date allowed under paragraph (5)(A)(ii) of this subsection may be determined to be in violation of state law or the rules in this chapter after that date.

(8) A course provider that immediately implements a change under paragraph (1) of this subsection assumes the risk of final approval being denied and of being required to come into compliance with state law and the rules in this chapter prior to the date allowed under paragraph (5)(A)(ii) of this subsection, including bearing the cost of reversing the change or otherwise modifying the ADM to come into compliance with state law and the rules in this chapter.

(j) Termination of the school's operation. Upon termination, schools shall deliver any missing student data to TEA within five days of termination.

(k) Renewal of ADM approval. The ADM approval must be renewed every two years. The renewal document due date shall be March 1, 2006, and every two years thereafter.

(1) For approval, the course provider shall:

(A) update all the statistical data and references to law with the latest available data; and

(B) submit a statement of assurance saying that the ADM has been updated to reflect the latest applicable laws and statistics.

(2) Failure to make necessary changes or to submit a statement of assurance documenting those changes shall be cause for revocation of the ADM approval.

(3) The commissioner may alter the due date of the renewal documents by giving the approved ADM six months' notice. The commissioner may alter the due date in order to ensure that the ADM is updated six months after the effective date of new state laws passed by the Texas Legislature.

(l) Access to instructor. With the exception of circumstances beyond the control of the school, the student shall have adequate access (on the average, within two minutes) to both a licensed instructor and telephonic technical assistance (help desk) throughout the course such that the flow of instructional information is not delayed.

§176.1111. Student Enrollment Contracts.

(a) No person shall be instructed, either theoretically or practically, or both, to operate or drive motor vehicles until after a written legal contract has been executed. A contract shall be executed prior to the school's receipt of any money.

(b) All driving safety and specialized driving safety contracts shall contain at least the following:

(1) the student's legal name and driver's [~~drivers~~] license number;

(2) the student's address, including city, state, and zip code;

(3) the student's telephone number;

(4) the student's date of birth;

(5) the full legal name and license number of the driving safety school or approval number of the classroom location, as applicable;

(6) the specific name of the approved driving safety course to be taught;

(7) a statement indicating the agreed total contract charges that itemizes all tuition, fees, and other charges;

(8) the terms of payment;

(9) the number of classroom lessons;

(10) the number of behind-the-wheel lessons, if applicable;

(11) the length of each lesson or course;

(12) the course provider's cancellation and refund policy;

(13) a statement indicating the specific location, date, and time that instruction is scheduled to begin and the date classroom instruction is scheduled to end;

(14) the signature and license number of the instructor;

(15) the signature of the student or the approved equivalent for a driving safety course delivered by an alternative delivery method; and

(16) a statement that notifies the student of the course provider's [~~owners~~] security and privacy policy regarding student data, including personal and financial data.

(c) In addition, all driving safety school contracts shall contain statements substantially as follows.

(1) I have been furnished a copy of the school tuition schedule; cancellation and refund policy; and school regulations pertaining to absence, grading policy, progress, and rules of operation and conduct.

(2) The school and course provider are [is] prohibited from issuing a uniform certificate of course completion if the student has not met all of the requirements for course completion, and the student should not accept a uniform certificate of course completion under such circumstances.

(3) This agreement constitutes the entire contract between the school and the student, and verbal assurances or promises not contained herein shall not bind the school or the student.

(4) I further realize that any grievances not resolved by the school may be forwarded to the course provider (identify name and address) and to Driver Training, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. The current telephone number of the division shall also be provided.

(d) Driving safety or specialized driving safety may use a group contract that includes more than one student's name.

(e) A copy of each contract shall be a part of the student files maintained by the driving safety school and/or course provider.

(f) Course providers shall submit proposed or amended contracts to the division [~~director~~], and those documents shall be approved prior to use by schools.

(g) Contracts for group instruction must meet all legal requirements.

(h) Contracts executed in an electronic format shall be considered to contain original signatures for purposes of this section.

§176.1112. Cancellation and Refund Policy.

(a) Course provider cancellation shall be in accordance with Texas Education Code, Chapter 1001 [~~Civil Statutes, Article 4413(29e)~~]. Driving safety schools shall use the cancellation policy approved for the course provider.

(b) Refunds for all driving safety schools or course providers shall be completed within 30 days after the effective date of termination. Proof of completion of refund shall be the refund document or copies of both sides of the canceled check and shall be on file within 120 days of the effective date of termination. All refund checks shall identify the student to whom the refund is assigned. In those cases where multiple refunds are made using one check, the check shall identify each individual student and the amount to be credited to that student's account.

(c) In reference to Texas Education Code, §1001.404(c) [~~Civil Statutes, Article 4413(29e), §13(h)(4)~~], a school or course provider is considered to have made a good faith effort to consummate a refund if the student file contains evidence of the following attempts:

- (1) certified mail to the student's last known address; and
- (2) certified mail to the student's permanent address.

(d) If it is determined that the school does not routinely pay refunds within the time required by Texas Education Code, §1001.402(b)(4) [~~Civil Statutes, Article 4413(29e), §13(h)(2)(E)~~], the school shall submit a report of an audit which includes any interest due as set forth in Texas Education Code, §1001.404 [~~Civil Statutes, Article 4413(29e), §13(h)(4)~~], conducted by an independent certified public accountant or public accountant who is properly registered with the appropriate state board of accountancy, of the refunds due former students. The audit opinion letter shall be accompanied by a schedule of student refunds due which shall disclose the following information for the previous two years from the date of request by Texas Education Agency (TEA) for each student:

- (1) name, address, and either social security number or driver's [~~drivers~~] license number;
- (2) last date of attendance or date of termination; and
- (3) amount of refund with principal and interest separately stated, date and check number of payment if payment has been made, and any balance due.

(e) Any funds received from, or on behalf of, a student shall be recorded in a format that is readily accessible to representatives of TEA and acceptable to the division [~~director~~].

§176.1113. Facilities and Equipment.

(a) No classroom facility shall be located in a private residence.

(b) The classroom facilities, when used for instruction, shall contain at least the following:

- (1) adequate seating facilities for all students being trained;
- (2) adequate charts, diagrams, mock-ups, and pictures relating to the operation of motor vehicles, traffic laws, physical forces, and correct driving procedures; and
- (3) any materials that have been approved as a part of the course approval.

(c) The amount of classroom space shall meet the use requirements of the maximum number of current students in class with appropriate seating facilities as necessitated by the activity patterns of the course.

(d) Each school and classroom shall conduct the Texas Education Agency-approved driving safety or specialized driving safety course in a facility that promotes the purpose and objectives as set forth [~~in the Texas Driver and Traffic Safety Education Act or the educational objectives set forth~~] in this chapter. The driving safety or specialized driving safety course shall be provided in designated instructional areas

that promote learning by ensuring that students are able to see and hear the instructor and audiovisual aids. Factors that will be considered in determining whether facilities promote learning include facility layout, visual and hearing distractions, and equipment functionality.

(e) Enrollment shall not exceed the design characteristics of the student workstations. The facilities shall meet any state and local ordinances governing housing and safety for the use designated.

(f) A violation of the law or rules by any multiple classroom location constitutes a violation by the driving safety school.

(g) All classroom approvals are contingent on the driving safety school license and shall be subject to denial or revocation if such action is taken against the license of the driving safety school that has responsibility for the classroom location.

(h) Course provider facilities shall be staffed in such a manner that an employee of the course provider is available to answer questions and take messages during regular business hours.

(i) The course provider location shall be the physical address as stated on the course provider license.

§176.1116. Names and Advertising.

(a) No driving safety school or course provider shall adopt, use, or conduct any business under a name or domain name that is like, or deceptively similar to, a name or domain name used by another Texas licensed driving safety, drug and alcohol driving awareness, or driver education school without written consent of that school. Schools [~~or extensions~~] holding a name approved by the Texas Education Agency (TEA) as of August 31, 1995, may continue to use the name approved by TEA. No new license will be issued to a driving safety school or course provider [~~after August 31, 1995,~~] with a name or domain name like, or deceptively similar to, a name or domain name used by another licensed driving safety, drug and alcohol driving awareness program, or driver education school. All advertisements of a multiple classroom location or alternative delivery method shall meet these same requirements.

(b) A school license shall not contain more than one school name. [~~Schools that hold approvals for more than one name as of August 31, 1995, shall provide written notice to TEA of the name that will be selected for the school at the renewal period subsequent to adoption of this rule.~~] Use of names other than the approved school name may constitute a violation of this section.

(c) The division [~~director~~] may require that a school or course provider furnish proof to TEA that substantiates any advertising claims made by the school or course provider. Failure to provide acceptable proof may require that the school or course provider, respectively, publish a retraction of such advertising claims in the same manner as the disputed advertisement. Continuation of such advertising shall constitute cause for suspension or revocation of the school or course provider license.

(d) A school or course provider shall not design, manufacture, or supply to any court of the state any written materials that may be false, misleading, or deceptive.

(e) The division [~~director~~] may deny approval of any course or the issuance of any required license or invoke other sanctions if a course provider or driving safety school advertises before the later of:

- (1) the 30th day after the date the course owner or school applies for a course provider or driving safety school license; or
- (2) the date the course owner or school receives a course provider or driving safety school license from the commissioner of education.

§176.1117. Uniform Certificate of Course Completion for Driving Safety or Specialized Driving Safety Course.

(a) Course provider responsibilities. Course providers shall be responsible for uniform certificates of course completion in accordance with this subsection.

(1) The course provider of a driving safety or specialized driving safety course shall ensure that each instructor completes the verification of course completion document approved by the Texas Education Agency (TEA). The verification of course completion document shall contain a statement to be signed by the instructor that states: "Under penalty of law, I attest to the fact that the student whose name and signature appears on this document has successfully completed the number of hours as required under Texas Education Code, Chapter 1001 [Civil Statutes, Article 4413(29e)], and that any false information on this document will be used as evidence in a court of law and/or administrative proceeding." This verification of course completion document shall be returned to the course provider upon completion of each driving safety class and maintained for no less than three years.

(2) The course provider shall maintain a policy which effectively ensures protective measures are implemented by the course provider to ensure that unissued uniform certificates of course completion are secure at all times. The records and unissued uniform certificates of course completion shall be readily available for review by representatives of TEA.

(3) The course provider shall maintain electronic files with data pertaining to all uniform certificates of course completion purchased from TEA. The course provider shall make available to TEA upon request an ascending numerical accounting record of the students receiving the uniform certificates of completion. The course provider shall ensure security of the data.

(4) The course provider shall electronically transmit data pertaining to issued uniform certificates of completion within seven calendar days of issuance of the certificates. The issue date indicated on the certificate shall be the date the course provider mails the certificate to the student.

(5) The course provider shall ensure that effective measures are taken to preclude lost data and that a system is in place to recreate electronic data for all certificates that have been issued.

(6) Course providers shall issue and mail uniform certificates of course completion only to students who have successfully completed the course provider's approved driving safety or specialized driving safety course taught by TEA-licensed instructors in TEA-approved locations as indicated on the verification of course completion document.

(7) The course provider must keep all parts of all voided uniform certificates of course completion.

(8) Course providers shall ensure that adequate training is provided regarding course provider policies and updates on course provider policies to all driving safety schools and instructors offering their approved driving safety or specialized driving safety course.

(9) Course providers shall report all unaccounted uniform certificates of course completion to the division [director] within five [two] business days of the discovery of the incident. In addition, the course provider shall be responsible for conducting an investigation to determine the circumstances surrounding the unaccounted uniform certificates of course completion. A report of the findings of the investigation, including preventative measures for recurrence, shall be submitted for approval to the division [director] within 30 days of the discovery on a form provided by TEA.

(10) Each unaccounted or missing uniform certificate of completion may be considered a separate violation within the meaning of Texas Education Code, §1001.553 [Civil Statutes, Article 4413(29e), §24(a)]. This may include lost, stolen, or otherwise unaccounted uniform certificates of course completion.

(11) Course providers shall mail all uniform certificates of course completion using first-class postage or an equivalent commercial delivery method.

(12) Course providers shall not transfer uniform certificates of course completion to a course other than the course for which the certificates were ordered from TEA.

(13) No course provider or employee shall complete, issue, or validate a uniform certificate of course completion to a person who has not successfully completed the entire course as verified by a TEA-licensed instructor.

(b) School owner responsibilities. In order to prevent misuse of uniform certificates of course completion, driving safety school owners shall ensure that:

(1) the course provider policies are followed and communicated to all instructors and employees of the school; and

(2) all records are returned to the course provider in a timely manner as set forth by the course provider.

(c) Instructor responsibilities. In order to prevent misuse of uniform certificates of course completion, driving safety and specialized driving safety instructors shall ensure that:

(1) all records are returned to the driving safety school to be forwarded to the course provider within the time allowed by course provider policy;

(2) the verification of course completion document provided by the course provider is signed by the instructor who conducted the class upon completion of the class;

(3) the entire course is completed prior to signing the verification of course completion document;

(4) the court information is obtained from each student taking the driving safety or specialized driving safety class for the purposes of Code of Criminal Procedure, Article 45.051 and 45.0511 [45.541]. Students who want an insurance reduction only shall have "insurance only" indicated in the court information area on the verification of course completion document provided to the course provider; and

(5) the instructor adheres to the school and course provider policies.

§176.1118. Application Fees and Other Charges.

(a) If a driving safety school or course provider changes ownership, the new owner shall pay the same fee as that charged for an initial fee for a school. In cases where, according to §176.1104(g)(3) of this title (relating to Course Provider Licensure), the change of ownership of a course provider is substantially similar, the new owner shall pay the statutory fees allowed by Texas Education Code, §1001.151 [Civil Statutes, Article 4413(29e), §13(d)(3)(A)].

(b) A late renewal fee shall be paid in addition to the annual renewal fee if a driving safety school or course provider fails to postmark a complete application for renewal at least 30 days before the expiration date of the driving safety school license. The requirements for a complete application for renewal are found in §176.1103(f) of this title (relating to Driving Safety School Licensure) and §176.1104(i) of this title (relating to Course Provider Licensure). The complete renewal

application must be postmarked or hand-delivered with a date on or before the due date.

(c) License, application, and registration fees shall be collected by the commissioner of education and deposited with the state treasurer according to the following schedule.

(1) The fee for a driving safety or specialized driving safety course approval is \$9,000.

(2) The initial fee for a course provider is \$2,000.

(3) The initial fee for a driving safety school is \$150.

(4) The annual renewal fee for a course provider is \$200.

(5) The fee for a change of address of a course provider or driving safety school is \$50.

(6) The fee for a change of name of a course provider or name of owner is \$100.

(7) The fee for a change of name of a driving safety school or name of owner is \$50.

(8) The application fee for each additional course for a driving safety school is \$25.

(9) The application fee for each administrative staff member is \$15.

(10) A processing fee of \$50 shall accompany each application for an original driving safety or specialized driving safety instructor's license.

(11) The annual instructor license fee is \$25.

(12) The late instructor renewal fee is \$25.

(13) The duplicate driving safety or specialized driving safety instructor license fee is \$8.00 [\$8].

(14) The fee for an investigation at a driving safety school or course provider to resolve a complaint is \$1,000.

(15) The course provider late renewal fee is \$200.

(16) The driving safety school late renewal fee is \$100.

(17) The fee for a duplicate uniform certificate of course completion is \$10.

(18) The fee for a uniform certificate of course completion is \$1.70.

(d) Failure to pay a required fee or penalty assessed shall be cause for revocation or denial of any license held by a course provider, driving safety school, or instructor of whom the fee or penalty is required. Revocation or denial proceedings shall be started if the fee is not paid within 30 days of the expiration date of the appeal period set forth in Texas Education Code, §1001.460 [Civil Statutes, Article 4413(29c), §17].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 10, 2005.

TRD-200500100

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: February 20, 2005

For further information, please call: (512) 475-1497



19 TAC §176.1110

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Education Code, §1001.052, which authorizes the agency to adopt and administer comprehensive rules governing driving safety courses, and §1001.053, which authorizes the commissioner of education to adopt and enforce rules necessary to administer driver and traffic safety education and to ensure the integrity of approved driving safety courses and to enhance program quality.

The repeal implements the Texas Education Code, §§1001.051 - 1001.153.

§176.1110. Alternative Delivery Methods of Driving Safety Instruction.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 10, 2005.

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Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: February 20, 2005

For further information, please call: (512) 475-1497



SUBCHAPTER DD. COMMISSIONER'S RULES ON HEARINGS HELD UNDER THE TEXAS EDUCATION CODE, CHAPTER 1001

19 TAC §176.1301

The Texas Education Agency (TEA) proposes an amendment to §176.1301, concerning driver training schools. The section establishes provisions for hearings held under the Texas Education Code, Chapter 1001. The proposed amendment would provide clarifications and reflect the codification of Vernon's Texas Civil Statutes, Article 4413(29c), titled the Texas Driver and Traffic Safety Education Act, into the Texas Education Code (TEC), Chapter 1001.

Texas Civil Statutes, Article 4413(29c), the Texas Driver and Traffic Safety Education Act, was codified by the 78th Texas Legislature, 2003, as Texas Education Code, Title 5, Chapter 1001. Also during 2003, there was a major reorganization of state government with a view toward streamlining regulatory processes and other governmental functions. In the course of reviewing aspects of the codification, it became apparent that a revision of 19 TAC Chapter 176 was necessary. Currently, rules in this

chapter are organized in the following subchapters: Subchapter AA, Commissioner's Rules on Minimum Standards for Operation of Licensed Texas Driver Education Schools; Subchapter BB, Commissioner's Rules on Minimum Standards for Operation of Licensed Texas Driving Safety Schools and Course Providers; Subchapter CC, Commissioner's Rules on Minimum Standards for Operation of Texas Drug and Alcohol Driving Awareness Programs; and Subchapter DD, Commissioner's Rules on Hearings Held Under the Texas Driver and Traffic Safety Education Act. Revisions are proposed for rules in Subchapters AA, BB, and DD.

Comments from the driver training industry, consumers, legislators, and other stakeholders contributed to the revision of 19 TAC Chapter 176. In Subchapters AA, BB, and DD, references to Texas Civil Statutes, Article 4413(29c), would be replaced with corresponding references to the Texas Education Code, Chapter 1001. A few references were not codified and those unchanged references now show the suffix "(Vernon's 2001)" to refer the reader to the prior version of the law. The decision not to codify non-operative language does not mean that the rule is no longer justified. Changes in Subchapter DD would include clarification of timeline requirements.

In order to correct references to newly codified statutory authority and to clarify and modify existing rule language, the following amendment to 19 TAC Chapter 176, Subchapter DD, is proposed.

The title of the subchapter would change to Commissioner's Rules on Hearings Held Under the Texas Education Code, Chapter 1001.

The amendment to 19 TAC §176.1301 would update subsections (a), (b)(1)(B), (b)(2), (b)(3), (b)(4), (d)(4), and (g)(1) to correct statutory citations; remove subsection (b)(7) to delete the definition of the Texas Driver and Traffic Safety Education Act, a statute that was codified; modify subsection (d)(1) to clarify the deadline for submission of a written request for a hearing to be 15 calendar days and that the postmark on the envelope would be the submittal date; and modify subsection (d)(3) to clarify the hearing date is to be held within 30 calendar days.

The amendment to 19 TAC §176.1301 would also modify subsections (g)(2) and (j)(2) to change days to calendar days for consistency, make an editorial change in subsection (h)(2); and revise subsection (h)(6) to reflect a date change.

Ernest Zamora, associate commissioner for support services and school finance, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Dr. Zamora has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment would be clarification of regulatory requirements for industry members. There will be no effect on small businesses as a result of the proposed amendment. There are no anticipated economic costs to persons who are required to comply with the amendment as proposed.

Comments on the proposed amendment may be submitted to Cristina De La Fuente-Valadez, Policy Coordination, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028.

The amendment is proposed under the Texas Education Code, §1001.052, which authorizes the agency to adopt and administer comprehensive rules governing driving safety courses, and §1001.053, which authorizes the commissioner of education to adopt and enforce rules necessary to administer driver and traffic safety education and to ensure the integrity of approved driving safety courses and to enhance program quality.

The amendment implements the Texas Education Code, §§1001.051 - 1001.153.

§176.1301. Rules of Procedure.

(a) **Applicability.** This section applies to all hearings and appeals brought under the Texas Education Code, Chapter 1001 [Driver and Traffic Safety Education Act (TDTSEA), Texas Civil Statutes, Article 4413(29e)]. Hearings under this section are also governed by Chapter 157, Subchapter AA, of this title (relating to General Provisions for Hearings Before the Commissioner of Education) for the administration of all appeals before the state commissioner of education. If this section conflicts with Chapter 157, Subchapter AA, or any other rule governing hearings, the requirements of this section prevail for all hearings conducted under Texas Education Code, Chapter 1001 [TDTSEA] unless expressly provided otherwise.

(b) **Definitions.** The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Adverse action**--Written notification that:

(A) denies, suspends, revokes, assesses a penalty against, or otherwise imposes conditions on a license or other form of approval held or sought by an applicant or licensee; and

(B) specifically provides the applicant or licensee with an opportunity for an adjudicative hearing under Texas Education Code, Chapter 1001 [TDTSEA].

(2) **Applicant**--A party seeking a license or other permission under Texas Education Code, Chapter 1001 [TDTSEA].

(3) **Commissioner**--The state commissioner of education or other person designated by the commissioner to render a decision under Texas Education Code, Chapter 1001 [TDTSEA].

(4) **Licensee**--A party holding a license or similar form of permission required under Texas Education Code, Chapter 1001 [TDTSEA].

(5) **Party**--A person or state agency named or admitted as a party to an appeal.

(6) **Party representative**--A lawyer or non-lawyer who acts on behalf of himself or herself or on behalf of another person during an adjudicative hearing.

~~{(7) TDTSEA--The Texas Driver and Traffic Safety Education Act, Texas Civil Statutes, Article 4413(29e).}~~

(c) **Grounds for hearing.** An applicant or licensee may request a hearing before the commissioner upon receiving notice of an adverse action.

(d) **Procedures to schedule hearing.**

(1) To obtain a hearing, an applicant or licensee shall submit a written request for a hearing to the agency representative identified in the written notice of adverse action. The written request shall be submitted not later than the 15th calendar day after the date the notice of an adverse action is received. The written request shall be submitted in person, by courier receipted delivery, or by certified or registered

mail. If mailed, the envelope's postmark shall be considered as the submittal date.

(2) A request for hearing shall include a specific statement of each issue the applicant or licensee intends to raise in the hearing to contest the adverse action. An applicant or licensee may be denied the opportunity to present evidence on issues that should reasonably have been raised in the written request for hearing.

(3) The agency representative shall forward the request for hearing and the notice of adverse action to the division of hearings for scheduling. A hearing shall be held within 30 calendar days after the date the written request for a hearing is received unless all parties agree to a later date for the hearing.

(4) A licensee who is issued a summary suspension under Texas Education Code, Chapter 1001 [TDTSEA, §25], shall be scheduled for a hearing on the suspension on an expedited basis.

(5) Petitions for review, answers, exceptions, and replies to exceptions need not be filed unless directed by a hearings examiner.

(e) Amendments. A notice of adverse action or request for hearing may be amended or supplemented at any time up to ten calendar days before the hearing and thereafter with approval of the hearings examiner. Amendments and supplements shall be submitted to the division of hearings in the manner prescribed for the service of pleadings, pleas, and motions.

(f) Classification of parties.

(1) An applicant or licensee issued a notice of adverse action that denies an initial license or renewal license shall be classified as a petitioner, and the agency shall be classified as a respondent.

(2) A licensee issued a notice of adverse action that revokes an existing license, imposes conditions on a license, or assesses a penalty, shall be classified as a respondent, and the agency shall be classified as petitioner.

(g) Motions for continuance.

(1) Continuances may be granted by the hearings examiner under Texas Education Code, Chapter 1001 [TDTSEA]; Chapter 157, Subchapter AA; and all other applicable law.

(2) If a continuance is sought by an applicant or licensee who is entitled to a hearing within 30 calendar days, the motion may be construed by the hearings examiner as a waiver of the right to the hearing within the statutory 30-day time line. The party representative for the agency may request, and the hearings examiner may grant, a waiver of the 30-day time line absent an objection by the applicant or licensee.

(h) Service of documents.

(1) Every pleading, plea, or motion filed with the division of hearings shall be served by delivering a copy to all party representatives of record in person, by agent, by courier receipted delivery, or by certified or registered mail, to the party's current address of record, or by facsimile to the recipient's current telecopier number of record.

(2) All other communications not specified in paragraph [subsection (h)] (1) of this subsection [section] that are filed with the division of hearings may be served by first class mail.

(3) Service by mail shall be complete upon deposit of the paper, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service.

(4) Service by facsimile completed after midnight local time of the recipient shall be deemed served on the following day.

(5) A party representative shall serve all party representatives by the same method as the document was filed with the division of hearings. Service by facsimile may be substituted for personal service. If one of the parties to be served does not have the ability to receive service by facsimile, service by certified mail shall be an adequate substitute for personal service.

(6) The party representative shall certify compliance with this rule in writing over the signature of the party representative on the filed document. The following form of certification shall be sufficient. "I certify that on this _____ day of _____, 20 [49] ____, I served copies of the foregoing pleading upon all other parties to this proceeding by (state the manner of service). Signature."

(7) If a filing does not contain a required certificate of service or otherwise show service on all other parties, the division of hearings may:

(A) return the document to the filing party;

(B) send a notice to all parties that the filing does not show service on all parties and will not be considered unless the division is notified that all parties have been served with the filing; or

(C) in the interest of economy of effort, send a copy of the filing to all parties.

(i) Stipulations.

(1) By stipulation, the parties may agree to any substantive or procedural matter.

(2) A stipulation may be filed in writing or entered on the record at the hearing.

(3) The hearings examiner may permit or require additional development of stipulated matters if needed to evaluate the issues presented on appeal.

(j) Decision.

(1) The hearings examiner shall prepare a decision that shall contain findings of fact and conclusions of law, separately stated. If deemed warranted, the hearings examiner may direct a party to draft and submit a proposal, which shall include proposed findings of fact and a concise and explicit statement of the underlying facts supporting such proposed findings.

(2) The commissioner or his designee shall issue a decision on the appeal within ten calendar days after the hearing unless the parties agree to a later date.

(k) Motion for rehearing. As a prerequisite to judicial appeal, a party may file a motion for rehearing. The motion shall satisfy all applicable requirements of law and Chapter 157, Subchapter AA.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 10, 2005.

TRD-200500102

Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: February 20, 2005
For further information, please call: (512) 475-1497

TITLE 22. EXAMINING BOARDS

PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 575. PRACTICE AND PROCEDURE

22 TAC §575.27

The Texas Board of Veterinary Medical Examiners ("Board") proposes amendments to §575.27, concerning Complaints--Receipt, Investigation and Disposition. This section sets out the process by which the Board receives and processes complaints against veterinarians. The amendments address a situation where a complaint has reached the stage of a contested case before the State Office of Administrative Hearings (SOAH). If a complaint is referred to SOAH, the amendments clarify that a complaint affidavit and notice of hearing must be served on the respondent licensee. The Board must send notice of a contested case to the licensee's last known address as listed in the agency's records. In accordance with SOAH procedures, if a licensee receives notice and fails to appear at the contested case hearing, the Board is entitled to a default proposal for decision from SOAH in favor of the Board. The amended section clarifies the procedures for notice in contested cases and provides a remedy for failure to respond to a notice of hearing, thus improving the efficiency of the entire hearing process.

Ron Allen, Executive Director, has determined that for the first five-year period the amended section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Allen has also determined that for the first five years the amended section is in effect the public benefit anticipated as a result of enforcing the amended section will be to increase the public's understanding of the Board's contested hearing process and provide for an efficient remedy if the procedures are not followed. There will be no effect on small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the amended section as proposed.

Comments on the proposed amendments may be submitted in writing to Julie Barker, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701, phone (512) 305-7555, fax (512) 305-7556, and must be received by February 20, 2005.

The amendments are proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter.

The amendments affect the Veterinary Licensing Act, Occupations Code, §801.203 and §801.206 relating to complaints, and

the Government Code, §2001.051 relating to notice of contested cases.

§575.27. *Complaints--Receipt, Investigation and Disposition.*

(a) - (d) (No change.)

(e) Contested case [Administrative law] hearing

(1) If a [the] licensee declines the board's settlement offer, or if the licensee fails to respond timely to the offer, or if the board rejects a proposed agreed order, the investigator of the complaint shall prepare a complaint affidavit containing the [complaint] allegations against the licensee. The signed and notarized complaint affidavit will then be reviewed by the board's legal counsel and signed by the executive director. The date the executive director signs the complaint affidavit is the official date of filing the complaint affidavit with the board. The complaint affidavit shall serve as the board's pleading in a contested case. At least ten (10) days prior to a scheduled hearing, the [The] complaint affidavit and notice of hearing shall be [is then] served on the licensee as set out in paragraph (3)(A) of this subsection [by certified mail or personal service at least ten (10) days prior to a scheduled hearing].

(2) The executive director shall submit to the State Office of Administrative Hearings (SOAH) a completed Request to Docket Case requesting SOAH to set a hearing and/or assign an administrative law judge to the contested case [complaint]. The board shall provide notice of the time, date, and place of the hearing to the licensee. Following issuance of a proposal for decision by the administrative law judge, the board by order may find that a violation has occurred and impose disciplinary action, or find that no violation has occurred. The board shall promptly advise the complainant of the board's action.

(3) Notice of SOAH hearing; continuance and default

(A) The board shall send notice of a contested case hearing before SOAH to the licensee's last known address as evidenced by the records of the board. Notice shall be sent by first class mail, certified or registered mail, or by personal service.

(B) If the licensee fails to timely enter an appearance or answer to the notice of hearing of the contested case, the board may request a continuance at the time of the hearing. If the licensee fails to appear at the time of hearing of the contested case, the board may move either for dismissal of the case from the SOAH docket, or request issuance of a default proposal for decision or order by the administrative law judge.

(f) - (h) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 6, 2005.

TRD-200500069

Julie A. Barker

Executive Assistant

Texas Board of Veterinary Medical Examiners

Earliest possible date of adoption: February 20, 2005

For further information, please call: (512) 305-7555

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 16. ECONOMIC REGULATION

PART 6. TEXAS MOTOR VEHICLE BOARD

CHAPTER 105. ADVERTISING

16 TAC §105.33

The Texas Motor Vehicle Board has withdrawn from consideration the proposed new §105.33 which appeared in the September 10, 2004, issue of the *Texas Register* (29 TexReg 8741).

Filed with the Office of the Secretary of State on January 4, 2005.

TRD-200500019

Brett Bray

Director

Texas Motor Vehicle Board

Effective date: January 4, 2005

For further information, please call: (512) 416-4899



CHAPTER 111. GENERAL DISTINGUISHING NUMBERS

16 TAC §111.6

The Texas Motor Vehicle Board has withdrawn from consideration the proposed amendment to §111.6 which appeared in the September 10, 2004, issue of the *Texas Register* (29 TexReg 8742).

Filed with the Office of the Secretary of State on January 4, 2005.

TRD-200500021

Brett Bray

Director

Texas Motor Vehicle Board

Effective date: January 4, 2005

For further information, please call: (512) 416-4899



TITLE 22. EXAMINING BOARDS

PART 9. TEXAS STATE BOARD OF MEDICAL EXAMINERS

CHAPTER 193. STANDING DELEGATION ORDERS

22 TAC §193.12

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed new section, submitted by the Texas State Board of Medical Examiners has been automatically withdrawn. The new section as proposed appeared in the July 2, 2004, issue of the *Texas Register* (29 TexReg 6211).

Filed with the Office of the Secretary of State on January 6, 2005.

TRD-200500056



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER U. USE OF CREDIT INFORMATION OR CREDIT SCORES

28 TAC §5.9941

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed amended section, submitted by the Texas Department of Insurance has been automatically withdrawn. The amended section as proposed appeared in the July 2, 2004, issue of the *Texas Register* (29 TexReg 6222).

Filed with the Office of the Secretary of State on January 6, 2005.

TRD-200500057



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 7. TEXAS COUNCIL ON PURCHASING FROM PEOPLE WITH DISABILITIES

CHAPTER 189. PURCHASES OF PRODUCTS AND SERVICES FROM PEOPLE WITH DISABILITIES

40 TAC §189.6

The Texas Council on Purchasing from People with Disabilities has withdrawn from consideration the proposed amendment to §189.6 which appeared in the July 30, 2004, issue of the *Texas Register* (29 TexReg 7296).

Filed with the Office of the Secretary of State on January 5, 2005.



TRD-200500054

Margaret Pfluger

Chairman

Texas Council on Purchasing from People with Disabilities

Effective date: January 5, 2005

For further information, please call: (512) 463-3244

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 16. ECONOMIC REGULATION

PART 6. TEXAS MOTOR VEHICLE BOARD

CHAPTER 103. GENERAL RULES

16 TAC §103.15, §103.16

The Texas Motor Vehicle Board of the Texas Department of Transportation adopts new 16 TAC §103.15 and §103.16, concerning the renewal of licenses and the administration of fees generated by new and renewal licenses, as published in the September 10, 2004, issue of the *Texas Register* (29 TexReg 8740). Sections 103.15 and 103.16 are adopted without changes and will not be republished.

Explanation of New Rules

New 16 TAC §103.15 and §103.16 are intended to replace and expand 16 TAC §111.13, Refund of Fees, which applied to holders of general distinguishing numbers, rather than to the entire licensee body. Section 111.13 is being simultaneously repealed.

New §103.15 provides guidelines governing the assessment and refund of certain fees during the licensing process. Subsection (a) of §103.15 states that no refund of licensing fees will be made if a license is cancelled, either voluntarily or involuntarily. Additionally, §103.15 states in subsection (b) that the Board will charge a fee to issue a duplicate copy of a license. This language implements the Board's authority under the Texas Occupations Code §2301.264(a)(8), which directs the Board to collect a \$50 fee for the issuance of a duplicate license. The rule also provides for a one-time exception to the collection of the duplicate license fee if the licensee does not receive the license and makes a timely request for its replacement. Section 103.15, subsection (c) allows an applicant for a license to withdraw an application prior to issuance, and receive a full refund of paid licensing fees, if requested in writing. Subsections (d) and (e) of §103.15 allow the Board to retain paid licensing fees as earned fees when an applicant for a new or renewal license abandons an application and fails to request a refund of fees within a specified period of time.

New §103.16 states that a licensee must file a complete renewal application before the current license expires. It also states that if the licensee fails to submit a renewal application with all required information and fees within 90 days of the date of expiration of the current license, then that licensee will be required to apply for a new license. This language provides a framework for the implementation of the Board's authority under the Texas Occupations Code §2301.264(b), which states that a person who fails to apply for a license or pay a fee required under the Occupations Code must pay a penalty for each 30 days of delinquency.

The proposed language of the rule institutes a 90-day limit for that occurrence to encourage licensees to make timely application for renewal, and also, to minimize administrative difficulties in allowing the renewal of licenses after expiration.

The new rules were proposed to provide a clearer explanation of the Board's regulations governing fees and renewals for all licensees, and to increase the agency's ability to conserve its administrative and accounting resources in dealing with delinquent parties and payments.

Summary of Comments

No written comments were received on the proposal. No oral comments were received at the public hearing on December 9, 2004.

Statutory Authority

The Board is authorized to adopt the new sections under Texas Occupations Code §2301.153 and §2301.155 and Texas Transportation Code §503.002, which provide the Board with authority to adopt rules as necessary and convenient to effectuate the provisions of the Chapters and to govern practice and procedure before the Board.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 4, 2005.

TRD-200500022

Brett Bray

Director

Texas Motor Vehicle Board

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Proposal publication date: September 10, 2004

For further information, please call: (512) 416-4899



16 TAC §103.17

The Texas Motor Vehicle Board of the Texas Department of Transportation adopts new 16 TAC §103.17, concerning the definition of motor vehicle under the Texas Occupations Code, as published in the October 15, 2004, issue of the *Texas Register* (29 TexReg 9616). Section 103.17 is adopted without changes and will not be republished.

Explanation of New Rule

New 16 TAC §103.17 seeks to clarify the definition of motor vehicle, as stated under Texas Occupations Code §2301.002(23)(A), to include motorized scooters and other equivalent vehicles.

A motorized scooter will meet the definition of motor vehicle under new 16 TAC §103.17 if it can commence and continue movement without manual assistance, as stated in §103.17(a)(1), and if its primary purpose is the transport of persons or property on public roadways, under §103.17(a)(2). In order for a vehicle to meet the requirement listed under subsection (a)(2), it must be either certified as a moped by the Texas Department of Public Safety under subsection (a)(2)(A), or be capable of certification as a motor vehicle by the National Highway Traffic Safety Administration under subsection (a)(2)(B). However, if a motorized scooter is not certified under either (a)(2)(A) or (B), then it may still be deemed a motor vehicle if it meets 3 of 5 alternative criteria listed under subsection (a)(2)(C). The new rule further clarifies in §103.17(b) that it does not include go-carts or motorized mobility devices.

Summary of Comments

Written and spoken comments on the proposed new rule were submitted by the Texas Motorcycle Dealers Association ("TMDA"); Yamaha Motor Corporation; Pep Boys-Manny, Moe & Jack of Delaware, Inc. ("Pep Boys"); The City of Dallas Police Department, Traffic Section; Manco Power Sports; and licensed Texas franchised motorcycle dealers. A number of Texas franchised motorcycle dealers also submitted written comments in favor of TMDA's position, but did not appear to speak at the public hearing held at the Board's regularly scheduled meeting on December 9, 2004.

In Favor

Attorney Will Wilson, Wilson & Varner, submitted written comments and spoke on behalf of TMDA. Robert Barger, President of TMDA, also submitted extensive written comments regarding the proposed new rule. TMDA favors the new rule requiring regulation of motorized scooters, pocket bikes, and similar vehicles. However, it also expressed concerns that the proposed new rule will not go far enough, because it does not require the regulation of all off-road vehicles.

In TMDA's comments, it stated that most of the vehicles to which this rule would apply are strictly for off-road use. Therefore, it argued both in writing and before the Board that the rule must include wording that it applies both to vehicles whose primary purpose is transporting persons/property on public roadways AND vehicles whose primary purpose is operating in off-road conditions. Otherwise, TMDA believes the rule will create confusion amongst the motorcycle dealer body and other potential licensees.

TMDA suggested alterations to the proposed language of the new §103.17, eliminating the distinction between off-road vehicles legally requiring titles and those not requiring titles. It argued that many vendors of motorized scooters and like vehicles are currently in violation of the law because they are not in compliance with dealer licensing and vehicle titling regulations under the Texas Transportation Code and the Texas Occupations Code. It stated the new rule, as proposed, allows vendors to easily avoid its intended purpose, as one need only warn against on-road use.

To support its arguments, TMDA relied on language found in Texas Occupations Code §§2301.001, 2301.002(23), and various sections of the Texas Transportation Code §§501.001, et seq. to support this proposition. Additionally, TMDA suggested changing the proposed rule to apply to motorized scooters or other vehicles that can reach speeds of at least 15 mph, provided they meet the other defined criteria.

Furthermore, TMDA believes that the lack of regulation of motorized scooters, pocket-bikes, and similar products creates danger to the health and safety of the general public. It recognized that having regulated, licensed dealers will aid consumers, protecting their welfare and investment. It stated that the Board has a duty to regulate the distribution and sale of motor vehicles to protect the economy and welfare of the general public. For that reason, TMDA requested that the Board enact the rule, with changes, on an expedited basis under Texas Government Code §2001.036.

A number of Texas franchised motorcycle dealers wrote and spoke in favor of the position held by TMDA. The dealers, from various areas of Texas, suggested that it was necessary for the Board to maintain a level playing field for all purveyors of motorized scooters, pocket bikes, and like vehicles. These dealers agreed that the TMDA suggested language would best ensure that.

Attorney Walter G. Pettey, III, Little Pedersen Fankhauser LLP, provided written and spoken comments for Yamaha Motor Corporation, USA ("Yamaha"), favoring the proposed new §103.17. However, Yamaha expressed concerns that the new rule would unintentionally apply to golf carts, because they were not specifically excluded in subsection (b) of the new rule. Yamaha proposed an alternative version of the rule that would specifically exclude golf carts from the rule.

Attorney Tania M. Hepfner, Piper Rudnick LLP, offered written and spoken comments on behalf of Pep Boys. The genesis of the controversy involving motorized scooters and other motorized products was brought before the Board some months ago, resulting from a request for a formal opinion filed by Pep Boys. Pep Boys became concerned about this issue because it would have to obtain licenses for each brand of motorized scooter or like vehicle were it to fall under the Board's definition of motor vehicle.

Based on the discussions arising from consideration of Pep Boys' request, the Board elected to address the question regarding these products with new 16 TAC §103.17. In its written and oral comments Pep Boys supports the idea of some general statement to better define "motor vehicle" under the Occupations Code. However, it feels that some of the proposed language will create further ambiguity. Also, it is concerned that "motorized toys" and "novelty devices" will be classified and regulated as motor vehicles. Therefore, it suggested alternative language eliminating certain definitions and criteria because it believes that would simplify the rule and its application.

Additionally, Pep Boys feels the maximum speed and range barriers which define what scooters or other such vehicles could be regulated as motor vehicles are too low. Instead, it suggested raising the maximum speed and maximum range allowed for motorized products, before their distribution becomes eligible for regulation by the Board. Pep Boys suggested these alternatives based upon research it conducted regarding national averages for school zone speed and street legal scooter distance capability. Furthermore, it believes the engine, weight and tire size test prongs are unnecessary, and implicitly a part of the speed and distance barriers.

Mr. Jim Rafac, Vice President of Engineering, Manco Power Sports, also appeared before the Board to speak in favor of the rule. Manco Power Sports is a manufacturer of go-carts, motorized scooters, and other recreational vehicles. Manco Power Sports stated that the rule represented a great deal of work by participants and staff. He also urged the Board to make sure the

definition of motor vehicle proposed by the rule truly closes the loopholes for these types of vehicles.

Against

Senior Corporal Anita Dickason, Accident Investigation, Traffic Section, of the Dallas Police Department ("Traffic Section") presented spoken comments, accompanied by an audio/visual presentation, opposing new 16 TAC §103.17. The City of Dallas Police Department, Traffic Section, also provided written comments in opposition to the new rule.

The Traffic Section tracks motor vehicle accidents, and has noticed an increasing number of accidents involving motorized scooters and pocket bikes. Pocket bikes are defined as scooters whose engine size is in the Moped classification, but do not meet Moped certification standards. The Traffic Section also promotes public education programs involving these and other types of vehicles.

The Traffic Section agrees that the sale of motorized products should be regulated through licensed dealers. Yet, it expressed concerns that new §103.17, by expanding the definition of motor vehicle to include certain motorized products, establishes a precedent that such products are "street legal." The Traffic Section believes that many of the motorized scooters represent a great danger to the public, because they lack basic safety equipment. Additionally, they often do not require insurance, inspection, or licenses to operate. Furthermore, these mini-vehicles have no age limits for operation, and are nearly invisible to other drivers. Thus, the Traffic Section maintains they should not be considered motor vehicles for transport on public streets, roads or highways.

In support of its viewpoint, the Traffic Section provided photographs demonstrating the poor visibility of the products. Also, it presented actual accident data involving motorized products, included pictorial representations of accidents. Many of these incidents resulted in serious injuries.

Part of the problem, from the Traffic Section's perspective, is that there are a myriad of different definitions of motor vehicle. It argued that the new rule would allow manufacturers to avoid providing adequate safety equipment, like turn signals and brake lights, because the products may be deemed street legal in their existing form. It stated that this could cause an adverse impact on traffic enforcement. Fundamentally, the Traffic Section argued that the Legislature needs to take action on these crucial issues.

Reasons for Disagreement with Party Submissions or Proposals

The Board disagrees that new §103.17 will have any precedential value with regard to the definition of "street legal" vehicles for purposes of traffic enforcement. The purpose behind the publication and adoption of the new rule is to determine whether the Board will require a license for the distribution of these motorized products. The Board disagrees that it should wait for the Legislature to address the issue. It believes that it must provide a level playing field for all dealers, as well as consumer protection in the form of correct product information and warranty recalls.

Furthermore, the Board recognizes that its jurisdiction extends only to the distribution of motor vehicles, as defined under the Occupations Code. Therefore, it cannot define what vehicles are street legal, and which vehicles require titles. These decisions rest with other state and Federal agencies.

Similarly, the Board disagrees that it can regulate all off-road vehicles under this new rule. The Occupations Code clearly defines "motor vehicle" as including off-road vehicles that are required to be titled. The Board feels that it would be beyond the reach of its jurisdiction to attempt to regulate all off-road vehicles through this rule, as that would fall outside the legislative definition of motor vehicle.

Regarding the criteria chosen to judge motorized products as motor vehicles, the staff developed the criteria after consultation with affected groups-including manufacturers, motorcycle dealers, distributors, and other state agencies. Additionally, some of the criteria match Federal guidelines defining motor vehicles. The staff represented that it had no intention of attempting to interpret guidelines that are determined by other agencies, such as the National Highway Traffic & Safety Administration or the Texas Department of Transportation's Vehicle Title and Registration Division. Instead, the staff explained that when questions arise, it would consult directly with the appropriate agency to determine if a particular vehicle falls into a category.

With respect to whether golf carts are specifically excluded from the rule, the Board acknowledged the comments, but decided that it was unnecessary-at this time-to distinguish between golf carts and motorized scooters. The Board announced that it had no intention of regulating golf carts as motor vehicles through this rule. The staff suggested that the Board consider golf carts as a separate issue, and perhaps amend the rule at a later date, adding an exclusion for them. The Board agreed with this approach.

Statutory Authority

The Board is authorized to adopt the new rule under Texas Occupations Code §2301.153 and §2301.155, which provide the Board with authority to adopt rules as necessary and convenient to effectuate the provisions of this Chapter and to govern practice and procedure before the Agency.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 6, 2005.

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Brett Bray

Director

Texas Motor Vehicle Board

Effective date: January 26, 2005

Proposal publication date: October 15, 2004

For further information, please call: (512) 416-4899



CHAPTER 111. GENERAL DISTINGUISHING NUMBERS

16 TAC §111.13

The Texas Motor Vehicle Board of the Texas Department of Transportation repeals 16 TAC §111.13, concerning the refund of fees for general distinguishing numbers upon cancellation of a dealer's license without changes to the proposal as published in the September 10, 2004, issue of the *Texas Register* (29 TexReg 8742).

Explanation of Repeal

The repeal of §111.13 is necessary because the Board is replacing this rule with new rule 16 TAC §103.15, which addresses the refund of fees to all licenses administered by the Board. By its own terms, 16 TAC §111.13 applied only to the holders of general distinguishing numbers. Thus, the repeal will aid the Board as it seeks to outline and clarify the parameters governing the refund of fees for all licensees.

Summary of Comments

No written comments were received on the proposal. No oral comments were received at the public hearing on December 9, 2004.

Statutory Authority

The Board is authorized to repeal the rule under Texas Occupations Code §2301.153 and §2301.155 and Texas Transportation Code §503.002, which provide the Board with authority to adopt and repeal rules as necessary and convenient to effectuate the provisions of the Chapters and to govern practice and procedure before the Board.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 4, 2005.

TRD-200500023

Brett Bray

Director

Texas Motor Vehicle Board

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Proposal publication date: September 10, 2004

For further information, please call: (512) 416-4899



16 TAC §111.20

The Texas Motor Vehicle Board of the Texas Department of Transportation adopts new 16 TAC §111.20, concerning Dealer Agents. The section is adopted with changes to the proposed text, as published in the October 15, 2004 issue of the *Texas Register* (29 TexReg 9617).

Explanation of Amendments

Persons are buying vehicles at wholesale auctions and other places under the authority of a licensed dealer, and then selling the vehicles on the Internet or the side of the road in the name of an unlicensed entity. The dealers who allow their licenses to be used in this manner for a fee, disclaim all responsibility for the actions of these independent contractors. These unlicensed entities compete unfairly with licensed and regulated dealers, who are required to make a significant investment in facilities and inventory. Additionally, consumers have no recourse against such dealers, who do not meet license requirements such as maintaining a security bond or a permanent place of business. Often a consumer cannot even find the seller, as that person is selling under a fictitious name, that is not listed and is not licensed. The rule is designed to require dealers to accept responsibility for those persons to whom they give permission to buy or sell on their behalf and to give written notice to anyone dealing with those individuals of the revocation of any such authority. Additionally, the rule will eliminate cash payments for vehicles sold to such individuals and provide a paper trail for enforcement efforts. Titles to vehicles sold to dealer agents shall not be delivered to

the agent but must be delivered to the licensed dealer or his financial institution so a licensed dealer will have knowledge of his agent's dealings.

The public benefit will be a reduction of the number of vehicles sold by unlicensed dealers in Texas, more accountability of sales by dealers and an easier method of tracing the holder of a vehicle's title.

The new section requires all dealers to provide written authorization to any person with whom the dealer's agent, representative, or employee will be doing business or acting on the dealer's behalf. The authorization must be written on letterhead of the authorizing dealer or on a form approved by the director or his designee, and signed by dealer principal or person in charge of daily activities of the dealership. The written authorization must contain the name of the employee, agent, or representative, current mailing address, telephone number, business name, address, and license number of the authorizing dealer. The written authorization is a record of the dealership and must be kept in accordance with the provisions of 16 TAC §111.15. Any licensee, including wholesale auctions, who buys and sells vehicles on a regular basis, must verify the authority of any person claiming to be either an employee, agent, or representative claiming authority to buy and sell on behalf of a licensed dealer. Titles to vehicles purchased by an authorized agent must be assigned to the sponsoring dealer. The titles shall not be delivered to the agent or representative but only to the dealer, the dealer's employee, or financial institution. Only checks drawn on the purchasing dealer's account or cashier's checks in the name of the purchasing dealer or wire transfers from the dealer's bank account shall be accepted for wholesale purchases.

Public comments suggested minor revisions to clarify the Board's intent. The Board agreed the suggestions would more clearly set out what was originally intended and added language to the proposed section. Subsection (a) no longer begins "Notwithstanding any other laws," and adds a section defining employee more specifically. Subsection (b) now requires written authorization for employees to conduct business on the dealer's behalf. Subsection (b)(1) adds references to representative or employee. Subsection (b)(2) changes "buying" to "authorizing" dealer and deletes the requirement that the person receiving authorization verify the authorization. Subsection (b)(4) was deleted entirely. Subsection (d) states that titles may not be delivered to the agent or representative, but only to the dealer, dealer's employee, or financial institution. A specific authorization for agents or representatives to sign odometer statements was added to Subsection (d). Subsection (e) adds a statement that cashier's checks in the name of the sponsoring dealer and wire transfers from that dealer's account may be accepted for wholesale purchases.

Summary of Comments

Written comments in support of the new section were received from the Texas Independent Auto Dealer's Association, the Houston Independent Auto Dealers Association, and Von Dohlen Motor Company. The Texas Wholesale Auto Auction Association, Inc. also submitted written comments in favor of the proposal, including a five-page list of members who supported the rule as published. Insurance Auto Auctions submitted written comments recommending certain changes. Oral comments in support of the proposal were received at the December 9, 2004 rules hearing from representatives of the Texas Wholesale Auto Auction Association, Inc., the Texas Independent Dealers Association, Manheim Dallas Auto

Auction, and A-1 Auto Agency. Oral comments in opposition were received from the Texas Automobile Dealers Association. The attorney for Rush Enterprises, Inc. recommended changes to the proposal.

Comments in favor of the proposal noted that the rules increase the responsibility sponsoring dealers bear for the actions of their agents or representatives, and impose restrictions on title assignments and origin of payment for new vehicles. The rule will help combat curbstoning and other illegal activities. It provides the agency's Enforcement Section with a way to trace illegal activities and to hold those who committed them responsible in the way least burdensome to the licensees who would have to comply. Another comment was that the rule achieved a balance between the needs of law enforcement and minimizing the burdens on legitimate business.

Other comments in favor stated that the rule would allow dealers to continue to come into the state of Texas without requiring employees to travel, and also allow dealers to continue to do their business in the same manner as they have done over the years. It would be very beneficial to dealers. A licensed independent dealer stated that his business required the non-employee agents to provide inventory. To hire employees to do what the dealer agents do would be prohibitively expensive for his business.

Some commenters suggested changes to the proposal. Recommendations were made to exclude employees of the dealership from the requirement for written authorization, delete the requirement for persons receiving written authorization to verify the document, and permit dealers to pay for wholesale purchases with cashier's checks and wire transfers.

It was noted that subsection 111.20(b)(2) refers specifically to buying dealer but that subsection (b) as a whole is not limited to buying dealers, and that subsection (c) seems to duplicate the provisions of (b)(2). Clarification on to whom a title could be delivered when the purchasing dealer was a corporation, and on the completion of odometer disclosure statements was requested. A general comment was that if a seller has received written authorization for an agent or representative, a seller should be able to deal with that agent or representative if that person was the dealer. To do otherwise restricts the effectiveness of having an agent and makes the sales transaction more costly and inefficient.

A concern was expressed that the rule did not sufficiently specify that its intent was to regulate persons engaging in wholesale transactions. Proposed language was submitted limiting the need to provide written authorization only to persons buying or selling vehicles for resale or operating a licensed auction for vehicles.

Another commenter stated that the rule text was too broad for its intended purpose. In addition, the initial phrase, "notwithstanding other law," made the rule too broad, because the agency cannot make a rule invalidating statutes or the federal or state constitutions. Subsection (b)(1) did not specify whether it requires written authorization or whether oral authorization is adequate. Also, subsection (b)(1) is not clear whether it refers to written or verbal authorization. It was suggested that the rule required narrowing. Specifically, (b)(1) and (2) should be limited because it mentions "financial considerations" and "any acts or omissions." There is a need for specifying what type of notification and authorization are required.

Reasons for Disagreement with Party Submissions or Proposals.

The Board adopted specific language suggestions limiting the need to provide written authorization only to persons buying or selling vehicles for resale or operating a licensed auction for vehicles. It also adopted changes to address other proposed language, added the word "written" in subsection (b)(1) and deleted "notwithstanding other law" in subsection (a). The overwhelming majority of the comments presented supported the rule.

The Board rejected the argument that the rule was too broad, because the changes adopted addressed that point. The rule in general is not overbroad. It requires only that dealers provide written statements of authority for agents who engage in wholesale transactions on the dealer's behalf. While this activity is of enormous economic importance in the state, it is in fact only one narrowly defined activity among those in which a dealership engages. The rule provides an officially recognized structure within which wholesale transactions may take place, but does not restrict wholesale activity in any significant manner.

The rule, as adopted, protects dealers and consumers by providing documentation of the persons who bought or sold a particular vehicle through wholesale transactions. For example, if it is discovered that there has been an alteration to the vehicle's odometer, it will be possible to track each person who bought or sold the vehicle in the normal stream of commerce.

Statutory Authority

The Board is authorized to adopt the new rule under Texas Occupations Code §2301.153, §2301.155 and Texas Transportation Code §503.002, which provides the Board with authority to adopt rules as necessary and convenient to effectuate the provisions of the Act and to govern practice and procedure before the agency.

§111.20. Dealer Agents.

(a) In regard to the duties and obligations of a dealer, a dealer is responsible for the acts and omissions of any agent, representative, or employee if that dealer has given authority to any person for that agent, representative, or employee to act on the behalf of the dealer. This section is not to be construed in any manner to allow retail sales by any dealer agent or representative. The term "employee" used in this section includes only those persons paid by the licensee and reported on the federal form W-2, Wage and Tax Statement.

(b) A dealer must provide written authorization to any person buying or selling motor vehicles for resale or operating a licensed auction for the sale of motor vehicles for resale with whom an agent, representative, or employee will be conducting business or acting on the dealer's behalf.

(1) Once a dealer has given written authorization for an agent, representative, or employee to buy and sell motor vehicles for resale for that dealer, the dealer shall be liable for any acts or omissions regarding duties and obligations of dealers caused by that agent, representative, or employee unless and until either the earlier of written notification of revocation of the agent's, representative's or employee's authority or revocation of the dealer's license.

(2) Written authorization shall be a letter on the dealership letterhead of the dealer authorizing buying or selling, or on a form approved by the director or his designee, and stating that the dealer is liable for any acts or omissions regarding duties and obligations of dealers, caused by that agent, representative, or employee including any financial considerations to be paid for the vehicle unless and until the recipient is notified in writing of the revocation of the authority. The letter or form shall be signed by the dealer principal or person in charge of daily activities of the dealership.

(3) The written authorization shall include the employee, agent or representative's name; current mailing address; phone number; the business name, address, and license number of the dealer with whom the employee or agent is associated. The written authorization is a record that must be kept as all other records set out in §111.15 of this chapter and shall be made available to the board or the board's representative upon request.

(c) Any licensee, including wholesale auctions who act on behalf of others, who buys and sells vehicles on a wholesale basis, including by sealed bid, is required to verify the authority of any person claiming to be either an employee, agent or representative who represents they are buying or selling motor vehicles on behalf of a licensed dealer.

(d) Titles to vehicles bought by an employee, agent or representative of a dealer shall be reassigned to the dealer by the seller or auction and shall not be delivered to the agent or representative but delivered only to the dealer, the dealer's employee, or the dealer's financial institution. Notwithstanding the prohibitions in this section, an authorized agent, representative or employee may sign any required odometer statements.

(e) Only checks or drafts drawn on the purchasing dealer's account, or cashiers checks in the name of the dealer, or wire transfers from the dealer's bank account shall be accepted for motor vehicles purchased in a wholesale transaction.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 10, 2005.

TRD-200500089

Brett Bray

Director

Texas Motor Vehicle Board

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For further information, please call: (512) 416-4899

TITLE 22. EXAMINING BOARDS

PART 18. TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS

CHAPTER 375. RULES GOVERNING CONDUCT

22 TAC §375.15

The Texas State Board of Podiatric Medical Examiners adopts new §375.15 regarding Compliance with Orders, Subpoenas, and Investigations without changes to the proposed text as published in the October 15, 2004, issue of the *Texas Register* (29 TexReg 9618). The text will not be republished.

The new rule is being adopted to provide the licensee with information on requirement for complying with requests for information.

No comments were received in response to the proposed new rule.

The new rule is being adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the law of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The adopted new rule implements Texas Occupations Code, §202.507.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 3, 2005.

TRD-200500009

Janie Alonzo

Staff Services Officer V

Texas State Board of Podiatric Medical Examiners

Effective date: January 23, 2005

Proposal publication date: October 15, 2004

For further information, please call: (512) 305-7002

CHAPTER 376. VIOLATIONS AND PENALTIES

22 TAC §376.1

The Texas State Board of Podiatric Medical Examiners adopts an amendment to §376.1 concerning Penalties, without changes to the proposed text as published in the October 15, 2004, issue of the *Texas Register* (29 TexReg 9618). The text will not be republished.

The amendment is being adopted to better describe the types of action the Board may take against a licensee.

No comments were received regarding the board's adoption of the amended section.

The amendments are being adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the law of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The adopted amendment implements Texas Occupations Code, §202.5015.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200500010

Janie Alonzo
Staff Services Officer V
Texas State Board of Podiatric Medical Examiners
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For further information, please call: (512) 305-7002



CHAPTER 378. CONTINUING EDUCATION

22 TAC §378.1

The Texas State Board of Podiatric Medical Examiners adopts an amendment to §378.1, concerning Continuing Education Required, without changes to the proposed text as published in the October 15, 2004, issue of the *Texas Register* (29 TexReg 9619). The text will not be republished.

The amendment is adopted to clarify what types of home study programs will be accepted for credit.

No comments were received regarding the board's adoption of the amended section.

The amendment is being adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the law of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The adopted amendment implements Texas Occupations Code, §202.305.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Janie Alonzo
Staff Services Officer V
Texas State Board of Podiatric Medical Examiners
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For further information, please call: (512) 305-7002



CHAPTER 379. FEES AND LICENSE RENEWAL

22 TAC §379.1

The Texas State Board of Podiatric Medical Examiners adopts an amendment to §379.1, concerning Fees, without changes to the proposed text as published in the October 15, 2004, issue of the *Texas Register* (29 TexReg 9619). The text will not be republished.

The amendment is adopted to include the new fees for House Bill 660 which allows the Board to collect fees for criminal history record information.

No comments were received regarding the board's adoption of the amended section.

The amendment is adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the law of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The adopted amendment implements Texas Occupations Code, §202.153.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Janie Alonzo
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For further information, please call: (512) 305-7002



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 837. APPRENTICESHIP TRAINING

The Texas Workforce Commission (Commission) adopts the *repeal* of Chapter 837, relating to Apprenticeship Training in its entirety. The *repeals* are adopted *without changes* to the proposal as published in the August 20, 2004, issue of the *Texas Register* (29 TexReg 8083).

Subchapter A, §837.1 and §837.2, concerning General Purpose and Definitions;

Subchapter B, §837.21 and §837.22, concerning Federal Requirements;

Subchapter C, §§837.41 - 837.44, concerning Funding Notice and Application Process;

Subchapter D, §§837.61 - 837.65, concerning Funding Qualifications;

Subchapter E, §§837.81 - 837.85, concerning Use of Funds and Account Maintenance;

Subchapter F, §837.100 and §837.101, concerning Compliance Monitoring; and

Subchapter G, §§837.121 - 837.125, concerning Reporting Requirements.

The Commission adopts *new* Chapter 837, relating to Apprenticeship Training Programs, *with changes* to the proposed text as published in the August 20, 2004, issue of the *Texas Register* (29 TexReg 8083).

Subchapter A. General Purpose and Definitions, §837.2. Definitions

Subchapter B. Funding, §837.26. Funding Distribution Process, §837.27. Administrative Costs Limitation

Subchapter C. Compliance Monitoring, §837.42. Corrective Action

The Commission adopts *new* Chapter 837, relating to Apprenticeship Training Programs, *without changes* as published in the August 20, 2004, issue of the *Texas Register* (29 TexReg 8083). The text will not be republished.

Subchapter A. General Purpose and Definitions, §837.1

Subchapter B. Funding, §§837.21 - 837.25

Subchapter C. Compliance Monitoring, §837.41

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

A. Purpose

B. Background and Authority

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. COORDINATION ACTIVITIES

PART IV. PUBLIC COMMENTS AND RESPONSES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

A. Purpose

The Commission adopts the repeal of Chapter 837 to remove redundant administrative processes and procedures. The Commission adopts new Chapter 837 to retain only the provisions required by the Commission and Texas Education Code, Chapter 133, concerning apprenticeship training. These changes will set forth more clearly the criteria regarding apprenticeship training programs.

B. Background and Authority

The Commission reviewed Texas Education Code, Chapter 133, the statute governing apprenticeship training; 40 TAC Chapter 837, the existing Commission rules governing apprenticeship training; and the contract language for apprenticeship awardees. The proposed new rules streamline and clarify apprenticeship training program requirements by eliminating language also found in statute or apprenticeship contracts. Therefore, the following apprenticeship training program requirements are not proposed in the new rule:

Registration with the Bureau of Apprenticeship and Training

Equal Opportunity Standards

Applications

Contract Amendments

Funding Qualifications for a Related Instruction (Apprentice) Class

Qualifications for Funding a Supplementary Instruction (Journeyman) Class

Allowable Expenditures

Cost Categories

Funding Limitations

Allowable Travel Expenses

Maintenance of Accounts

Apprenticeship Training Class Organization Report for Related Instruction

Class Organization Report for Supplementary (Journeyman) Instruction

Expenditure Reports

Close-out Report

Annual Performance Report

The Commission's new rules eliminate repetitive language and simplify and shorten Chapter 837.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

Subchapter A. General Purpose and Definitions

§837.1. Scope and Purpose

The Commission adopts new §837.1, which states the scope and purpose of new Subchapter A. The intent is to consolidate the provisions of Texas Education Code, Chapter 133, and eliminate repetition of information.

§837.2. Definitions

The Commission adopts new §837.2 to provide definitions for Administrator's Guide, apprentice, apprenticeship committee, apprenticeship training program, Bureau of Apprenticeship and Training, contact-hour rate, and local education agency, which are not defined in Texas Education Code, Chapter 133, or 40 TAC Chapter 800. Contact-hour rate is defined as a method used for funds distribution.

Subchapter B. Funding

§837.21. Notice of Available Funds

The Commission adopts new §837.21 that states the manner in which the Commission announces the availability of funds by posting public notice in a variety of publications in order to reach the broadest audience. New §837.21 also provides the fiscal year dates for apprenticeship training programs.

§837.22. Eligible Applicants

The Commission adopts new §837.22(a), which defines local education agencies as the entities eligible to apply for apprenticeship funds. New §837.22(b) establishes the requirements for local education agencies to act as the fiscal agents for the funds.

§837.23. Local Workforce Development Board Review

The Commission adopts new §837.23 to provide the opportunity for Local Workforce Development Boards (Boards) to review and comment on applications for apprenticeship training programs. As set forth in Texas Government Code Chapter 2308, Boards are responsible for the planning and oversight of all workforce training and services and the evaluation of all workforce development programs in the local workforce development areas (workforce areas). The Boards serve as a single point of contact for local businesses to communicate their skill needs and influence the direction of all workforce development programs in the workforce areas. The Commission believes that Board review of the apprenticeship training program applications will further coordination between Boards and the apprenticeship training programs.

§837.24. Funding Qualifications for Apprenticeship Training Programs

The Commission adopts new §837.24 to set forth the funding qualifications for apprenticeship training programs currently set forth in §837.63, which the Commission adopts to repeal.

§837.25. Priority for Distributing Funds

The Commission adopts new §837.25 to prioritize the distribution of funds for apprenticeship training classes currently set forth in §837.62, which the Commission adopts to repeal.

§837.26. Funding Distribution Process

The Commission adopts new §837.26 to identify the funding distribution process currently set forth in §837.43, which the Commission adopts to repeal.

§837.27. Administrative Costs Limitation

The Commission adopts new §837.27 to establish an administrative cap on apprenticeship training program funds as set forth in §837.82, which the Commission adopts to repeal.

Subchapter C. Compliance Monitoring

§837.41. Program and Fiscal Monitoring

The Commission adopts new §837.41 to stipulate the Agency's monitoring provisions for the apprenticeship training programs currently set forth in §837.100, which the Commission adopts to repeal.

§837.42. Corrective Action

The Commission adopts new §837.42 to address corrective action for noncompliance under 40 TAC §800.174.

PART III. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of each of Texas' twenty-eight Local Workforce Development Boards, the Apprenticeship and Training Advisory Committee (ATAC), the Apprenticeship and Training Association of Texas (ATAT), and several apprenticeship training programs. The Commission provided the concept brief to each of these groups for consideration and review. During the rulemaking process, the Commission considered all information gathered in order to develop a rule that provides clear and concise direction to all parties involved. In addition, the Commission held a public hearing on October 18, 2004.

PART IV. PUBLIC COMMENTS AND RESPONSES

Public comments were received from:

1. Felipe Viesca, Dallas, Ft. Worth & North Texas Painters Local Union No. 53 Joint Apprenticeship and Training
2. A. C. McAfee, North Texas Electrical Joint Apprenticeship and Training Committee
3. Randy Jennings, CenTex Independent Electrical Contractors, Inc.
4. Lloyd Quinney, Quinney Electric, Inc.
5. Renea Beasley, Independent Electrical Contractors of Texas
6. Marlin K. Daniel, Bexar Electric LTD
7. Mike Benke, Tim Smoot Electric
8. Gary Sodd, Sodd Electric Co., Inc.
9. S. R. Randall, Randall Electric
10. Mark McComas, Fort Worth ISD

11. Tom Jones, Independent Electrical Contractors-Fort Worth/Tarrant County
 12. Jacky D. Martin, JBI Electrical Systems, Inc.
 13. Marvin J. Jarzombek, Iron Workers Local #66 Joint Apprenticeship Committee
 14. Keith F. Hershey, Tower Electric
 15. Christopher Bean, Independent Electrical Contractors, Texas Gulf Coast, Inc.
 16. Robert Chambers, Chambers Electric
 17. Steve Dement, Joint Apprenticeship & Training Committee of Pipe Fitters Local Union 21
 18. John E. Gray, South Texas Electrical Joint Apprentice and Training Committee
 19. John Garza, Sheet Metal Workers Local 67 Area Joint Apprenticeship
 20. Gilbert Peters, Jupiter Electric and Service Co.
 21. Gilbert Ferrales, National Electrical Contractors Association
 22. Joe D. Hall, Advanced Electric Company
 23. Michael Waidley, Beaumont Independent School District
 24. Richard Levy, Texas AFL-CIO and the Texas State Building and Construction Trades Council
 25. Robert Cross, Apprenticeship and Training Association of Texas - Houston
 26. Eddie Moran, San Antonio Area Plumbers and Pipefitters Joint Apprenticeship and Training Committee
 27. Wayne Kelly, Kel-Tex Electric Inc.
 28. John C. Quebe, KenMor Electric Company, LP
 29. Ronald C. Kolle
 30. Mr. Schultz, Associated Builders and Contractors, South Texas Chapter
 31. Bruce Wilson, Sheet Metal Workers Apprenticeship
 32. Danny Prosperie, Electrical Training Center
 33. Ann Hodge, Chair, Texas Workforce Investment Council
- The comment summaries and responses are as follows:

§837.2 DEFINITIONS

COMMENT: Several commenters stated that key language in the definitions was not included in the proposed rules. The commenters indicated that language specifying that an apprentice's employment must be with a private sector employer should be included in the rules. The commenters also stated that the requirement that apprentices be registered with the U.S. Department of Labor's Bureau of Apprenticeship and Training should be contained in the rules. One commenter indicated that the definition of apprentice should include the requirement that related instruction is in addition to full-time employment.

RESPONSE: The Commission agrees with the commenters and has modified the definition of apprentice to include these recommendations.

COMMENT: Several commenters expressed concern that the Administrator's Guide was not mentioned in the proposed rule.

The commenters stated that the Administrator's Guide provided comprehensive details regarding apprenticeship programs.

RESPONSE: The Commission agrees that the Administrator's Guide is a comprehensive tool for the local education agencies and apprenticeship programs. However, the Commission also maintains that the Administrator's Guide is an operational or "how to" guide. A definition of the Administrator's Guide, which includes the Agency's Web site address for accessing the Administrator's Guide, has been added to the proposed rule.

§837.21 NOTICE OF AVAILABLE FUNDS

COMMENT: One commenter stated that the proposed rules do not adequately ensure that all existing programs and eligible program sponsors receive notice of available funding.

RESPONSE: The Commission is concerned that the prior method of providing notice of available funds through the *Texas Register* did not provide adequate notice because of limited readership. By identifying specific venues in rule, the Commission's ability to provide wider notification is limited. The Commission believes that it will reach the broadest audience possible by providing notice in venues such as the Agency's Web site and the Texas Marketplace. Therefore, the proposed rule will not be modified.

§837.23 LOCAL WORKFORCE DEVELOPMENT BOARD REVIEW

COMMENT: One commenter stated that because of the Texas Workforce Investment Council's (TWIC) statutory responsibilities to advocate for and facilitate an integrated workforce development system in Texas, TWIC supports greater coordination and collaboration between Boards and local apprenticeship training programs in order to ensure a skilled, available workforce. However, the commenter recommended that necessary steps be taken to avoid unintended consequences that may affect program delivery such as a delay in funding and/or an additional administrative burden on local programs due to the new local board review process.

RESPONSE: The Commission appreciates the commenters' concerns and agrees with TWIC's support of cooperation between local apprenticeship programs and Boards. The Commission further agrees with the commenter's concern that no unintended consequences occur; therefore, it has directed staff to take steps to ensure that no delays in funding occur because of Board review.

COMMENT: The majority of commenters opposed the requirement that Boards have the opportunity to review and comment on the application for apprenticeship training program funding.

RESPONSE: Although this is new language in rule, in Fiscal Year 2004 local education agencies were required to provide a copy of the application for apprenticeship training program funding to the Boards for review and comment. The Commission adds this language in rule based upon Texas Government Code §2308.302, which states that Boards have the responsibility for the planning and oversight of all workforce training and services and the evaluation of all workforce development programs in the workforce areas. Boards will not approve apprenticeship applications or recommend funding limitations; rather, the review and comment are intended to ensure that the Boards are aware of apprenticeship training programs in their area. The Commission has directed staff to take steps to ensure that no delays in funding occur because of Board review.

§837.26 FUNDING DISTRIBUTION PROCESS

COMMENT: Three commenters expressed concern over the funding distribution process. One commenter questioned what defines approved hours or approved contact hours and who approves the hours.

RESPONSE: The rule requires that an apprenticeship training program must be certified and registered with the Bureau of Apprenticeship and Training to receive funding. As part of the certification and registration process, the Bureau of Apprenticeship and Training approves the number of contact hours for each course.

COMMENT: Commenters also questioned the absence of language regarding the attendance of apprentices on the third class meeting or the second and fourth class meetings for the computation of the contact-hour rate.

RESPONSE: Contact-hour rate computations are based on the official class organization report submitted by the local education agency to the Bureau of Apprenticeship and Training. An apprentice's attendance is still required at either the third class meeting or the second and fourth class meetings. However, the Commission believes that this process is more appropriately located in the Administrator's Guide than in rule.

COMMENT: Certain commenters expressed concern over the delays in the notification of the final contact-hour rate and final funding.

RESPONSE: The Commission agrees with the commenters' concerns over the delays in funding. Therefore, the Commission has directed staff to ensure that contact-hour rates are finalized and notification is given as soon as possible after receiving the official class organization report from the Bureau of Apprenticeship and Training, in order for contracts to be amended, as appropriate.

§837.27 ADMINISTRATIVE COSTS LIMITATION

COMMENT: One commenter expressed concern over the exclusion of the 15 percent administrative limit on apprenticeship training program funding.

RESPONSE: The Commission agrees with the commenter and modified the rule to include an administrative costs limitation on apprenticeship training program funding.

GENERAL COMMENTS

COMMENTER: One commenter stated concerns over the use of the terms Commission and Agency. The commenter was unsure whether Agency meant the Texas Workforce Commission or local education agency.

RESPONSE: The Texas Workforce Commission's General Administration rules, 40 TAC Chapter 800, Subchapter A, define Commission as the body of governance of the Texas Workforce Commission composed of three members appointed by the Governor as established under Texas Labor Code Chapter 301. Agency is defined as the unit of state government established under Texas Labor Code Chapter 301 that is presided over by the Commission and administered by the Executive Director. In Chapter 837, local education agency is referred to only as local education agency.

COMMENT: One commenter expressed concern over the removal of certain procedural contract language (i.e., allowable travel expenses) from the rule and stated this type of language should be in the rules and contracts.

RESPONSE: The Commission disagrees that the contract language should remain in rule. The changes were proposed to streamline the rules and make them less cumbersome and repetitive by removing information already found in statute or more appropriately communicated in contracts.

COMMENT: The majority of commenters were opposed to the repeal of Chapter 837. Although many expressed agreement with the Commission's desire to streamline and eliminate duplication in the current rule, the commenters did not understand the need to repeal the rule in its entirety.

RESPONSE: The Commission appreciates that the commenters were apprehensive as a result of repealing the entire Chapter 837. However, such practice is customary in rule making in order to streamline, eliminate duplication, and remove administrative processes and procedures that are routinely handled as a part of the contracting process. Much of the current rule simply reiterates Chapter 133 of the Texas Education Code. There is no need to repeat the requirements already found in the statute that is the governing authority for this program. The Commission believes that the key elements have been included in the rule and the most effective-and least confusing-means of removing the many administrative processes and procedures is to repeal the entire current rule and propose a new rule.

COMMENT: Several commenters expressed concern with the elimination of the language regarding commingling of funds.

RESPONSE: Texas Education Code Chapter 133 prohibits the commingling of funds. However, the current rule provides an incorrect interpretation of commingling of funds. The current interpretation prohibits any Chapter 133-funded program from receiving funds from other government sources. The prohibition against commingling of funds is intended to ensure that separate accounting is maintained for audit purposes. The Commission believes that the language in Chapter 133 adequately addresses the issue; therefore, the rule will not be modified.

COMMENT: Many commenters stated that the ATAC should have been involved in the process of drafting the proposed rules.

RESPONSE: ATAC members were involved in multiple discussions and had several opportunities to offer alternative solutions to proposed rule changes. In July 2003, several ATAC members met with the former Commissioner Representing Labor regarding possible program changes, and had ongoing conversations with the current Commissioners. Subsequently, staff briefed ATAC three times regarding possible rule changes, and staff met individually with several representatives of local apprenticeship training programs. Based on input provided regarding the policy concept, as well as input regarding the proposed rule, staff modified the rule language.

COMMENT: Two commenters expressed concern with the impact statements in the proposed rules. One commenter stated that contrary to comments by Mr. Townsend and Mr. Hughes, having more apprenticeship programs competing for the same fixed amount of state revenue for job training will cause a significant proportional decrease in funding for existing apprenticeship programs. Therefore, there will be a significant adverse impact to small business through increased job training costs for employers participating in TWC apprenticeship training programs.

RESPONSE: The Commission disagrees with the commenters' statement regarding the impact findings of Mr. Townsend and Mr. Hughes. The level of funding available or approved to support apprenticeship programs in any year-either in the aggregate

or individually among local education agencies-is not affected by this rule. The number of apprenticeship programs that may compete for funding or be approved for funding is not addressed or affected by this rule. The commenters' assertion that there will be "...a significant adverse impact to small business through increased job training costs for employers participating in TWC apprenticeship training programs" as a result of this proposed rule is not reasonable. This outcome is not intended or anticipated by the Commission.

COMMENT: A few commenters stated that more effort should be placed on educating the Boards about apprenticeship training programs. A suggestion was made to have a workshop at the upcoming annual workforce conference.

RESPONSE: The Commission agrees with the commenters that efforts should be increased to provide more information to the Boards regarding apprenticeship training programs. The Commission thanks the commenter for the suggestion, and in response an apprenticeship workshop was included at the November 2004 conference.

SUBCHAPTER A. GENERAL PURPOSE AND DEFINITIONS

40 TAC §837.1, §837.2

The repeals are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeals affect Title 4, Texas Labor Code, and Chapter 133 of the Texas Education Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Donna Garrett

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SUBCHAPTER B. FEDERAL REQUIREMENTS

40 TAC §837.21, §837.22

The repeals are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeals affect Title 4, Texas Labor Code, and Chapter 133 of the Texas Education Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. FUNDING NOTICE AND APPLICATION PROCESS

40 TAC §§837.41 - 837.44

The repeals are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeals affect Title 4, Texas Labor Code, and Chapter 133 of the Texas Education Code.

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SUBCHAPTER D. FUNDING QUALIFICATIONS

40 TAC §§837.61 - 837.65

The repeals are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeals affect Title 4, Texas Labor Code, and Chapter 133 of the Texas Education Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. USE OF FUNDS AND ACCOUNT MAINTENANCE

40 TAC §§837.81 - 837.85

The repeals are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeals affect Title 4, Texas Labor Code, and Chapter 133 of the Texas Education Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. COMPLIANCE MONITORING

40 TAC §§837.100, §837.101

The repeals are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeals affect Title 4, Texas Labor Code, and Chapter 133 of the Texas Education Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. REPORTING REQUIREMENTS

40 TAC §§837.121 - 837.125

The repeals are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeals affect Title 4, Texas Labor Code, and Chapter 133 of the Texas Education Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 837. APPRENTICESHIP TRAINING PROGRAMS

SUBCHAPTER A. GENERAL PURPOSE AND DEFINITIONS

40 TAC §§837.1, §837.2

The new rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Title 4, Texas Labor Code, and Chapter 133 of the Texas Education Code.

§837.2. *Definitions.*

In addition to the definitions contained in §800.2 of this title, and the definitions contained in Texas Education Code, §133.001 and 29 C.F.R. §29.2 relating to apprenticeship training, the following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Administrator's Guide**--The Administrator's Guide supplements this chapter by providing all required operational details and procedures for planning and submitting an application for apprenticeship training program funding, as well as the annual timeline for submission. The Administrator's Guide may be accessed on the Agency's Web site at www.texasworkforce.org.

(2) **Apprentice**--A full-time paid worker, at least 16 years of age except where a higher minimum age standard is otherwise fixed by law, who is employed in the private sector, registered with the U.S. Department of Labor's Bureau of Apprenticeship and Training, and receives related instruction training to learn a skill in a certified apprenticeable occupation.

(3) **Apprenticeship committee**--An autonomous local group consisting of members appointed by one or more employers of apprentices, or by one or more bargaining agents representing members of an apprenticeable trade, or by a combination of the two. An apprenticeship committee is designated for each apprenticeship training program to establish instruction standards and goals for a particular craft or crafts, interview and select applicants, and monitor the program and apprentices as described in Texas Education Code §133.003.

(4) **Apprenticeship training program**--A training program that provides on-the-job training, preparatory instruction, supplementary instruction, or related instruction in a trade that has been certified as an apprenticeable occupation by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training. The program is a structured system of training designed to prepare individuals for occupations in skilled trades and crafts by combining training under the supervision of an experienced journeyworker with job-related classroom instruction.

(5) **Bureau of Apprenticeship and Training**--The U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training.

(6) **Contact-hour rate**--A method used to distribute apprenticeship training funds to local education agencies. The total available funds are divided by the statewide total number of contact hours of apprenticeship training instruction classes submitted to the Agency.

(7) **Local education agency**--For purposes of Chapter 837, a public school district or state postsecondary institution, under Texas Education Code, Chapter 133, that serves as a sponsor for an apprenticeship training program pursuant to a contract between the local education agency and an apprenticeship committee.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. FUNDING

40 TAC §§837.21 - 837.27

The new rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Title 4, Texas Labor Code, and Chapter 133 of the Texas Education Code.

§837.26. *Funding Distribution Process.*

(a) Funds are distributed to the eligible local education agencies by the Commission in a two-step process consisting of planning estimates and final distributions. Details of the annual distribution

process, including the timeline, are set forth in the Administrator's Guide located on the Agency's Web site at www.texasworkforce.org.

(b) Planning Estimates.

(1) Each local education agency shall report to the Agency the number of approved class hours, estimated number of registered apprentices, and estimated number of contact hours of job-related instruction classes for the prospective fiscal year. The estimated contact hours are determined by the number of registered apprentices anticipated to enroll in a class, multiplied by the number of approved hours that the class will be conducted during the year.

(2) The estimated number of contact hours must be submitted by the local education agency and received by the Agency on or before the respective due dates as annually prescribed by the Agency.

(3) The Agency, after determining the preliminary contact-hour rate, shall notify each local education agency of its planning estimates for the prospective fiscal year.

(c) Final Distributions.

(1) Each local education agency shall report to the Agency the number of approved class hours, number of registered apprentices, and number of contact hours of job-related instruction classes for the fiscal year.

(2) The approved number of contact hours must be submitted by the local education agency and received by the Agency on or before the respective due dates as annually prescribed by the Agency.

(3) The Agency, after determining the final contact-hour rate, shall notify each local education agency of its final distribution based on the final contact-hour rate.

§837.27. Administrative Costs Limitation.

Costs that are allowable, necessary, and reasonably incurred by a local education agency to properly administer and manage the funds, such as salaries for local education agency supervisors and administrative supplies, are considered administrative costs. Administrative costs may not exceed 15 percent of the total contract.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. COMPLIANCE MONITORING

40 TAC §837.41, §837.42

The new rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Title 4, Texas Labor Code, and Chapter 133 of the Texas Education Code.

§837.42. Corrective Action

Failure to comply with applicable laws, regulations, policies, the Administrator's Guide, and other guidelines may result in corrective action, pursuant to 40 TAC §800.174, which shall include technical assistance and may lead to withdrawal of funds at the Commission's discretion.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 1 TAC §5.195(c)

TABLE I

Federal Programs Requiring TRACS Review

DEPARTMENT OF AGRICULTURE (Agriculture/Rural Development)

10.025	Plant and Animal Disease, Pest Control, and Animal Care
10.028	Wildlife Services
10.070	Colorado River Basin Salinity Control Program
10.353	National Rural Development Partnership
10.405	Farm Labor Housing Loans and Grants
10.411	Rural Housing Site Loans and Self-Help Housing Land Development Loans
10.415	Rural Rental Housing Loans
10.420	Rural Self-Help Housing Technical Assistance
10.427	Rural Rental Assistance Payments
10.433	Rural Housing Preservation Grants
10.553	School Breakfast Program
10.555	National School Lunch Program
10.556	Special Milk Program for Children
10.557	Special Supplemental Nutrition Program for Women, Infants, and Children
10.559	Summer Food Service Program for Children
10.560	State Administrative Expenses for Child Nutrition
10.570	Nutrition Services Incentive
10.675	Urban and Community Forestry Program
10.760	Water and Waste Disposal Systems for Rural Communities
10.763	Emergency Community Water Assistance Grants
10.766	Community Facilities Loans and Grants
10.767	Intermediary Re-lending Program
10.768	Business and Industry Loans
10.769	Rural Business Enterprise Grants
10.770	Water and Waste Disposal Loans and Grants
10.771	Rural Cooperative Development Grants
10.773	Rural Business Opportunity Grants
10.854	Rural Economic Development Loans and Grants
10.855	Distance Learning and Telemedicine Loans and Grants
10.901	Resource Conservation and Development
10.904	Watershed Protection and Flood Prevention
10.906	Watershed Surveys and Planning

DEPARTMENT OF COMMERCE (Economic Development)

11.300	Grants for Public Works and Economic Development Facilities
11.302	Economic Development - Support for Planning Organizations
11.303	Economic Development - Technical Assistance
11.307	Economic Adjustment Assistance
11.312	Research and Evaluation Program
11.400	Geodetic Surveys and Services
11.405	Anadromous Fish Conservation Act Program
11.407	Inter-jurisdictional Fisheries Act of 1986
11.419	Coastal Zone Management Administration Awards
11.420	Coastal Zone Management Estuarine Research Reserves
11.426	Financial Assistance for National Centers for Coastal Ocean Science
11.427	Fisheries Development and Utilization Research and Development Grants

- 11.428 Intergovernmental Climate-Program (NESDIS)
- 11.433 Marine Fisheries Initiative
- 11.434 Cooperative Fishery Statistics
- 11.435 Southeast Area Monitoring and Assessment Program
- 11.439 Marine Mammal Data Program
- 11.443 Short Term Climate Fluctuations

DEPARTMENT OF COMMERCE (Economic Development)

- 11.452 Unallied Industry Projects
- 11.454 Unallied Management Projects
- 11.455 Cooperative Science and Education Program
- 11.463 Habitat Conservation
- 11.467 Meteorological and Hydrologic Modernization Development
- 11.472 Unallied Science Program
- 11.473 Coastal Services Center
- 11.474 Atlantic Coastal Fisheries Cooperative Management Act
- 11.550 Public Telecommunications Facilities Planning and Construction
- 11.552 Technology Opportunities Program
- 11.611 Manufacturing Extension Partnership

DEPARTMENT OF DEFENSE

- 12.100 Aquatic Plant Control
- 12.101 Beach Erosion Control Projects
- 12.104 Flood Plain Management Services
- 12.105 Protection of Essential Highways, Highway Bridge Approaches, and Public Works
- 12.106 Flood Control Projects
- 12.107 Navigation Projects
- 12.108 Snagging and Clearing for Flood Control
- 12.109 Protection, Clearing and Straightening Channels
- 12.113 State Memorandum of Agreement Program for the Reimbursement of Technical Services
- 12.607 Community Economic Adjustment Planning Assistance
- 12.610 Community Economic Adj. Plan. Asst. Joint Land Use Studies
- 12.611 Community Eco. Adjustment Planning Asst. Reductions in Defense Industry Employment
- 12.612 Community Base Reuse Plans
- 12.613 Growth Management Planning Assistance

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

- 14.128 Mortgage Insurance - Hospitals
- 14.129 Mortgage Insurance - Nursing Homes, Intermediate Care Facilities, Board and Care Homes
- 14.134 Mortgage Insurance - Rental Housing
- 14.135 Mortgage Insurance - Rental and Coop. Housing for Moderate Income Families and Elderly
- 14.138 Mortgage Insurance - Rental Housing for the Elderly
- 14.157 Supportive Housing for the Elderly
- 14.181 Supportive Housing for Persons with Disabilities
- 14.218 Community Development Block Grants/Entitlement Grants
- 14.219 Community Development Block Grants/Small Cities Program
- 14.231 Emergency Shelter Grants Program
- 14.246 Community Development Block Grants/Brownfields Economic Development Initiative
- 14.248 Community Development Block Grants - Section 108 Loan Guarantees
- 14.850 Public and Indian Housing
- 14.872 Public Housing Capital Fund

DEPARTMENT OF INTERIOR (Reclamation, Historic Preservation and Recreation)

- 15.506 Water Desalination Research and Development Program
- 15.614 Coastal Wetlands Planning, Protection and Restoration Act
- 15.632 Conservation Grants Private Stewardship for Imperiled Species
- 15.904 Historic Preservation Fund Grants-In-Aid
- 15.916 Outdoor Recreation - Acquisition, Development and Planning
- 15.919 Urban Park and Recreation Recovery Program

DEPARTMENT OF JUSTICE (Law Enforcement/Substance Abuse Control)

- 16.202 Offender Reentry Program
- 16.203 Sex Offender Management Discretionary Grant
- 16.524 Legal Assistance for Victims
- 16.525 Grants to Reduce Violent Crimes Against Women on Campus
- 16.526 Technical Assistance and Training Initiative
- 16.527 Supervised Visitation, Safe Havens for Children
- 16.528 Training Grants to Stop Abuse/Sexual Assault of Older/Disabled Individuals
- 16.529 Education and Training to End Violence Against and Abuse of Women with Disabilities
- 16.540 Juvenile Justice and Delinquency Prevention - Allocation to States
- 16.541 Developing, Testing and Demonstrating Promising New Programs
- 16.544 Gang-Free Schools and Communities - Community-Based Gang Intervention
- 16.548 Title V - Delinquency Prevention Program
- 16.554 National Criminal History Improvement Program (NCHIP)
- 16.577 Emergency Federal Law Enforcement Assistance
- 16.578 Federal Surplus Property Transfer Program
- 16.579 Byrne Formula Grant Program
- 16.580 Edward Byrne Memorial State/Local Law Enforc. Asst. Discretionary Grants Program
- 16.585 Drug Court Discretionary Grant Program
- 16.588 Violence Against Women Formula Grants
- 16.589 Rural Domestic Violence and Child Victimization Enforcement Grant Program
- 16.590 Grants to Encourage Arrest Policies and Enforcement of Protection Orders
- 16.593 Residential Substance Abuse Treatment for State Prisoners
- 16.606 State Criminal Alien Assistance Program
- 16.609 Community Prosecution and Project Safe Neighborhoods
- 16.610 Regional Information Sharing Systems
- 16.613 Scams Targeting the Elderly
- 16.614 State and Local Anti-Terrorism Training
- 16.710 Public Safety Partnership and Community Policing Grants
- 16.726 Juvenile Mentoring Program
- 16.727 Enforcing Underage Drinking Laws Program
- 16.728 Drug Prevention Program
- 16.736 Transitional Housing Asst. for Victims of Domestic Violence, Stalking, or Sexual Assault

DEPARTMENT OF LABOR (Workforce Development)

- 17.207 Employment Service
- 17.235 Senior Community Service Employment Program
- 17.260 WIA Dislocated Workers
- 17.264 Migrant and Seasonal Farm Workers
- 17.802 Veterans' Employment Program
- 17.804 Local Veterans' Employment Representative Program

DEPARTMENT OF TRANSPORTATION

- 20.106 Airport Improvement Program
- 20.205 Highway Planning and Construction
- 20.219 Recreational Trails Program
- 20.303 Grants-in-Aid for Railroad Safety - State Participation
- 20.500 Federal Transit - Capital Investment Grants
- 20.505 Federal Transit - Metropolitan Planning Grants
- 20.507 Federal Transit - Formula Grants
- 20.509 Formula Grants for Other Than Urbanized Areas
- 20.512 Federal Transit Technical Assistance
- 20.513 Capital Assistance Program for Elderly Persons and Persons with Disabilities
- 20.514 Transit Planning and Research
- 20.515 State Planning and Research

DEPARTMENT OF TRANSPORTATION

- 20.600 State and Community Highway Safety
- 20.604 Safety Incentive Grants for Use of Seatbelts
- 20.605 Safety Incentives to Prevent Operation of Motor Vehicles by Intoxicated Persons
- 20.608 Minimum Penalties for Repeat Offenders for Driving While Intoxicated
- 20.700 Pipeline Safety
- 20.701 University Transportation Centers Program
- 20.714 National Pipeline Mapping System
- 20.801 Development and Promotion of Ports and Intermodal Transportation

NATIONAL ENDOWMENT FOR THE ARTS

- 45.025 Promotion of the Arts - Partnership Agreements

INSTITUTE OF MUSEUM AND LIBRARY SERVICES

- 45.310 State Library Program

NATIONAL SCIENCE FOUNDATION

- 47.076 Education and Human Resources

SMALL BUSINESS ADMINISTRATION

- 59.037 Small Business Development Center

DEPARTMENT OF VETERANS AFFAIRS

- 64.005 Grants to States for Construction of State Home Facilities
- 64.201 National Cemeteries
- 64.203 State Cemetery Grants

ENVIRONMENTAL PROTECTION AGENCY

- 66.001 Air Pollution Control Program Support
- 66.034 Survey Studies, Investigation Demonstrations and Special Purpose Activities
- 66.306 Environmental Justice Collaborative Problem Solve Program
- 66.418 Construction Grants for Wastewater Treatment Works
- 66.419 Water Pollution Control State and Interstate Program Support
- 66.424 Surveys/Studies/Demons./Spec. Purpose - Safe Drinking Water Act

- 66.433 State Underground Water Source Protection
- 66.436 Surveys/Studies/Investigations/Demos/Training/Coop. Agreements - Clean Water Act
- 66.439 Targeted Watershed Grants
- 66.454 Water Quality Management Planning
- 66.456 National Estuary Program
- 66.458 Capitalization Grants for Clean Water State Revolving Funds
- 66.460 Non-point Source Implementation Grants
- 66.461 Wetland Program Grants
- 66.463 Water Quality Cooperative Agreements
- 66.467 Wastewater Operator Training Grant Program (Technical Assistance)
- 66.468 Capitalization Grants for Drinking Water State Revolving Funds
- 66.471 State Grants to Reimburse Operators of Small Water Systems/Training/Certification Costs
- 66.472 Beach Monitoring and Notification Program Implementation Grants
- 66.474 Water Protection Grants to the States
- 66.475 Gulf of Mexico Program
- 66.476 Security Planning Grants for Large Drinking Water Utilities
- 66.500 Environmental Protection - Consolidated Research
- 66.508 Senior Environmental Employment Program
- 66.509 Science to Achieve Results (STAR) Program

ENVIRONMENTAL PROTECTION AGENCY

- 66.510 Surveys, Studies, Investigations and Special Purpose Grants within the Office of R&D
- 66.511 Office of Research and Development Consolidated Research
- 66.515 Greater Opportunities Research Program
- 66.516 P3 Award: National Student Design Comp. for Sustainability
- 66.600 Environmental Protection Consolidated Grants - Program Support
- 66.604 Environmental Justice Hazardous Substances Research Small Grants/Community Groups
- 66.605 Performance Partnership Grants
- 66.606 Surveys, Studies, Investigations and Special Purpose Grants
- 66.610 Surveys, Studies, Investigations and Special Purpose Grants - Office of the Administrator
- 66.611 Environmental Policy and Innovation Grants
- 66.700 Consolidated Pesticide Enforcement Cooperative Agreements
- 66.701 Toxic Substances Compliance Monitoring Cooperative Agreements
- 66.707 TSCA Title IV State Lead Grants Certification of Lead-Based Paint Professionals
- 66.708 Pollution Prevention Grants Program
- 66.709 Capacity Building Grants and Cooperative Agreements for States and Tribes
- 66.714 Pesticide Environmental Stewardship - Regional Grants
- 66.716 Surveys, Studies, Investigations, Training Demonstrations and Educational Outreach
- 66.717 Source Reduction Assistance
- 66.801 Hazardous Waste Management State Program Support
- 66.802 Superfund State, Political Subdivision, and Indian Tribe Site - Specific Coop. Agreements
- 66.804 State and Tribal Underground Storage Tanks Program
- 66.805 Leaking Underground Storage Tank Trust Fund Program
- 66.808 Solid Waste Management Assistance
- 66.809 Superfund State and Indian Tribe Core Program Cooperative Agreements
- 66.814 Brownfields Training, Research, and Technical Assistance/Cooperative Agreements
- 66.815 Brownfield Job Training Cooperative Agreements
- 66.817 State and Tribal Response Program Grants
- 66.818 Brownfields Assessment and Cleanup Cooperative Agreements

DEPARTMENT OF ENERGY

- 81.041 State Energy Program
- 81.049 Office of Science Financial Assistance Program

DEPARTMENT OF EDUCATION

84.002 Adult Education - State Grant Program
84.011 Migrant Education - State Grant Program
84.031 Higher Education - Institutional Aid
84.042 TRIO - Student Support Services
84.048 Vocational Education - Basic Grants to States
84.116 Fund for the Improvement of Postsecondary Education
84.132 Centers for Independent Living
84.144 Migrant Education - Coordination Program
84.160 Training Interpreters for Individuals who are Deaf and Individuals who are Deaf-Blind
84.165 Magnet Schools Assistance
84.173 Special Education - Preschool Grants
84.181 Special Education - Grants for Infants and Families with Disabilities
84.184 Safe and Drug-Free Schools and Communities - National Programs
84.186 Safe and Drug-Free Schools and Communities - State Grants
84.196 Education for Homeless Children and Youth
84.214 Even Start - Migrant Education
84.215 Fund for the Improvement of Education
84.235 Rehabilitation Services Demonstration and Training Programs
84.243 Tech-Prep Education
84.255 Literacy Programs for Prisoners
84.287 Twenty-First Century Community Learning Centers
84.298 State Grants for Innovative Programs

DEPARTMENT OF EDUCATION

84.319 Educational Technology State Grants
84.323 Special Education - State Program Improvement Grants for Children with Disabilities
84.324 Special Education - Research/Innovation to Improve Services/Results for Children w/Disabilities
84.327 Special Education - Technology/Media Services for Individuals with Disabilities
84.329 Special Education - Studies and Evaluations
84.330 Advanced Placement Program
84.332 Comprehensive School Reform Demonstration
84.334 Gaining Early Awareness and Readiness for Undergraduate Programs
84.336 Teacher Quality Enhancement Grants
84.341 Community Technology Centers
84.342 Preparing Tomorrow's Teachers to Use Technology
84.344 TRIO - Dissemination Partnership Grants
84.349 Early Childhood Educator Professional Development
84.351 Arts in Education
84.353 Tech-Prep Demonstration Grants
84.357 Reading First State Grants
84.364 Literacy through School Libraries

ELECTION ASSISTANCE COMMISSION

90.400 Help America College Vote Program

DEPARTMENT OF HEALTH AND HUMAN SERVICES

93.003 Project Grants for Facilities to Improve the Health Status of Minority Populations
93.005 State and Territorial Tech. Asst. Capacity Develop. Minority HIV Demonstration Program
93.006 Medical Reserve Corps Small Grant Program
93.041 Spec. Program. for the Aging - Title VII, Ch. 2 - Long Term Care Ombudsman Services
93.042 Special Programs for the Aging - Title III - Disease Prevention and Health Promotion Services

93.043 Special Programs for the Aging - Title III - Grants for Supportive Services and Senior Centers
 93.044 Special Programs for the Aging - Title III, Part C - Nutrition Services
 93.045 National Family Caregiver Support
 93.052 Nutrition Services Incentive Program
 93.053 Centers for Genomics and Public Health
 93.063 Health Disparities in Minority Health
 93.100 Comprehensive Comm. Mental Health Svcs. - Children w/Serious Emotional Disturbances
 93.104 Bilingual/Bicultural Service Demonstration Grants
 93.116 Acquired Immunodeficiency Syndrome (AIDS) Activity
 93.118 Emergency Medical Services for Children
 93.127 Tech. and Non-Financial Asst. to Health Centers/Ntnl. Health Svc Corps Delivery Sites
 93.134 Community Programs to Improve Minority Health Grant Program
 93.137 AIDS Education and Training Centers
 93.145 Health Center Grants for Homeless Populations
 93.161 Grants for State Loan Repayment
 93.165 Disabilities Prevention
 93.185 National Research Services Awards
 93.197 Surveillance of Hazardous Substance Emergency Events
 93.204 Human Health Studies - Applied Research and Development
 93.211 Hansen's Disease National Ambulatory Care Program
 93.215 Family Planning - Services
 93.217 Development and Coordination of Rural Health Services
 93.223 Community Health Centers
 93.224 Demonstration Coop. Agreement for Development/Implementation of CJ Treatment Networks
 93.230 Traumatic Brain Injury - State Demonstration Grant Program
 93.234 Coop. Agreements State Treatment Outcomes and Performance Pilot Studies Enhancement
 93.238 State Capacity Building
 93.240 Innovative Food Safety Projects
 93.245 Health Centers Grants for Migrant and Seasonal Farm Workers

DEPARTMENT OF HEALTH AND HUMAN SERVICES

93.246 Universal Newborn Hearing Screening
 93.251 Healthy Community Access Program
 93.252 Grants for Education, Prevention/Early Detection of Radiogenic Cancers and Diseases
 93.257 Family Planning - Personnel Training
 93.260 Expansion/Antiretroviral Therapy Programs HIV - Africa/Caribbean
 93.268 Drug-Free Communities Support Program Grants
 93.276 Centers for Disease Control and Prevention - Investigations and Technical Assistance
 93.283 National Community Centers of Excellence in Women's Health
 93.302 National Center for Research Resources
 93.392 Transitional Living for Homeless Youth
 93.550 Abandoned Infants
 93.551 Education/Prevention Grants to Reduce Sex. Abuse of Runaway, Homeless/Street Youth
 93.557 Child Support Enforcement
 93.563 Community Services Block Grant - Discretionary Awards
 93.570 Community Services Block Grant Discretionary Awards - Community Food and Nutrition
 93.571 Refugee and Entrant Assistance - Discretionary Grants
 93.576 Refugee and Entrant Assistance - Wilson/Fish Program
 93.583 Family Violence Prevent. Svcs. for Battered Women's Shelters - Discretionary Grants
 93.592 Job Opportunities for Low-Income Individuals
 93.593 Welfare Reform Research, Evaluations and National Studies
 93.595 Services to Victims of a Severe Form of Trafficking
 93.598 Head Start
 93.600 Child Support Enforcement Demonstrations and Special Projects
 93.602 Assistance to Torture Victims

93.616 Voting Access for Individuals with Disabilities - Grants to States
 93.623 Developmental Disabilities Basic Support and Advocacy Grants
 93.630 Developmental Disabilities Projects of National Significance
 93.643 Child Welfare Services - State Grants
 93.645 Social Services Research and Demonstration
 93.647 Child Abuse and Neglect State Grants
 93.669 Child Abuse and Neglect Discretionary Activities
 93.670 Family Violence Prevention Svcs/Grants for Battered Women's Shelters - States/Tribes
 93.671 Healthy Communities Access Program Demonstration Authority
 93.890 Family and Community Violence Prevention Program
 93.910 Rural Health Outreach and Rural Network Development Program
 93.912 Grants to States for Operation of Offices of Rural Health
 93.913 HIV Emergency Relief Project Grants
 93.914 Grants to Provide Outpatient Early Intervention Services with Respect to HIV Disease
 93.919 Healthy Start Initiative
 93.926 Health Centers Grants for Residents of Public Housing
 93.938 HIV Prevention Activities - Non-Governmental Organization Based
 93.939 HIV Prevention Activities - Health Department Based
 93.940 HIV Demonstration, Research, Public and Professional Education Projects
 93.941 Human Immunodeficiency Virus (HIV)/AIDS Surveillance
 93.944 Assistance Programs for Chronic Disease Prevention and Control
 93.945 Coop. Agreements to Support State-Based Safe Motherhood/Infant Health Initiative Programs
 93.952 Trauma Care Systems Planning and Development
 93.953 Health and Safety Programs for Construction Work
 93.977 Coop. Agreements for State-Based Diabetes Control Programs Evaluation/Surveillance
 93.988 National Health Promotion
 93.995 Adolescent Family Life-Demonstration Projects

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

94.002 Retired and Senior Volunteer Program
 94.011 Foster Grandparent Program
 94.013 Volunteers in Service to America
 94.016 Senior Companion Program

DEPARTMENT OF HOMELAND SECURITY

97.003 Agricultural Inspection
 97.004 State Domestic Preparedness Equipment Support Program
 97.005 State and Local Homeland Security Training Program
 97.006 State and Local Homeland Security Exercise Support
 97.008 Urban Areas Security Initiative
 97.012 Cuban/Haitian Entrant Program
 97.013 State Access to the Oil Spill Liability Trust Fund
 97.014 Bridge Alteration
 97.029 Flood Mitigation Assistance
 97.030 Community Disaster Loans
 97.034 Disaster Unemployment Assistance
 97.036 Public Assistance Grants
 97.042 Emergency Management Performance Grants
 97.048 Federal Assistance to Individuals and Households - Housing
 97.049 Federal Assistance to Individuals and Households - Disaster Housing Operations
 97.050 Federal Assistance to Individuals and Households - Other Needs
 97.051 State and Local All Hazards Emergency Operations Planning
 97.052 Emergency Operations Centers
 97.053 Citizen Corps

- 97.054 Community Emergency Response Teams
- 97.055 Interoperable Communications Equipment
- 97.067 Homeland Security Grant Program
- 97.068 Competitive Training Grants
- 97.069 Aviation Research Grants
- 97.070 Map Modernization Management Support
- 97.071 Metropolitan Medical Response System
- 97.072 National Explosives Detection Canine Team Program

TABLE II

State Programs Requiring TRACS Review

Housing and Urban Development

TDHCA Planning/Capacity Building Program

Reclamation, Historic Preservation and Recreation

Texas Recreation and Parks Account

Environmental Protection

Municipal Solid Waste Tipping Fee-funded Projects (TCEQ)

Energy

State of Texas Oil Overcharge Program

Health and Human Services

State Funds for Community-Based Alcohol/Drug Problems

YOU HAVE THE RIGHT:

(1) to respect, dignity, privacy, confidentiality and nondiscrimination. That includes the right to:

- (a) be treated fairly and with respect; and
- (b) know that your medical records and discussions with your providers will be kept private and confidential.

(2) to a reasonable opportunity to choose a health care plan and primary care provider (the doctor or health care provider you will see most of the time and who will coordinate your care) and to change to another plan or provider in a reasonably easy manner. That includes the right to:

- (a) be informed of how to choose and change your health plan and your primary care provider;
- (b) choose any health plan you want that is available in your area and choose your primary care provider from that plan;
- (c) change your primary care provider;
- (d) change your health plan without penalty; and
- (e) be educated about how to change your health plan or your primary care provider.

(3) to ask questions and get answers about anything you don't understand. That includes the right to:

- (a) have your provider explain your health care needs to you and talk to you about the different ways your health care problems can be treated; and
- (b) be told why care or services were denied and not given.

(4) to consent to or refuse treatment and actively participate in treatment decisions. That includes the right to:

- (a) work as part of a team with your provider in deciding what health care is best for you; and
- (b) say yes or no to the care recommended by your provider.

(5) to utilize each available complaint and appeal process through the managed care organization and through Medicaid, and receive a timely response to complaints, appeals and fair hearings. That includes the right to:

- (a) make a complaint to your health plan or to the state Medicaid program about your health care, your provider or your health plan;

- (b) get a timely answer to your complaint;

- (c) access the plan's appeal process and the procedures for doing so; and

- (d) request a fair hearing from the state Medicaid program and request information about the process for doing so.

(6) timely access to care that does not have any communication or physical access barriers. That includes the right to:

- (a) have telephone access to a medical professional 24 hours a day, 7 days a week in order to obtain any needed emergency or urgent care;

- (b) get medical care in a timely manner;

- (c) be able to get in and out of a health care provider's office, including barrier free access for persons with disabilities or other conditions limiting mobility, in accordance with the Americans with Disabilities Act;

- (d) have interpreters, if needed, during appointments with your providers and when talking to your health plan. Interpreters include people who can speak in your native language, assist with a disability, or help you understand the information; and

- (e) be given an explanation you can understand about your health plan rules, including the health care services you can get and how to get them.

(7) to not be restrained or secluded when doing so is for someone else's convenience, or is meant to force you to do something you don't want to do, or to punish you.

YOU HAVE THE RESPONSIBILITY:

(1) to learn and understand each right you have under the Medicaid program. That includes the responsibility to:

- (a) learn and understand your rights under the Medicaid program;
- (b) ask questions if you don't understand your rights; and
- (c) learn what choices of health plans are available in your area.

(2) to abide by the health plan and Medicaid policies and procedures. That includes the responsibility to:

- (a) learn and follow your health plan rules and Medicaid rules;
- (b) choose your health plan and a primary care provider quickly;
- (c) make any changes in your health plan and primary care provider in the ways established by Medicaid and by the health plan;
- (d) keep your scheduled appointments;
- (e) cancel appointments in advance when you can't keep them;
- (f) always contact your primary care provider first for your non-emergency medical needs;
- (g) be sure you have approval from your primary care provider before going to a specialist; and
- (h) understand when you should and shouldn't go to the emergency room.

(3) to share information relating to your health status with your primary care provider and become fully informed about service and treatment options. That includes the responsibility to:

- (a) tell your primary care provider about your health;
- (b) talk to your providers about your health care needs and ask questions about the different ways your health care problems can be treated; and
- (c) help your providers get your medical records.

(4) actively participate in decisions relating to service and treatment options, make personal choices, and take action to maintain your health. That includes the responsibility to:

- (a) work as a team with your provider in deciding what health care is best for you;
- (b) understand how the things you do can affect your health;
- (c) do the best you can to stay healthy; and
- (d) treat providers and staff with respect.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Texas Water Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code. Before the State may settle a judicial enforcement action under the Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: *Harris County, Texas and the State of Texas vs. DCD Construction Services, Inc.*, Cause No. 2004-46016, in the 127th Judicial District Court of Harris County, Texas

Nature of Defendant's Operations: Defendant DCD Construction Services, Inc. operated a construction site in Harris County. A suit was filed by Harris County alleging that DCD Construction Services, Inc. failed to post the authorization at the site, failed to retain the required storm water pollution prevention plan at the site, allowed off-site accumulation of sediment, left open the construction entrance without any method of sediment control, failed to have inlet protections, and failed to have erosion/sediment controls.

Proposed Agreed Judgment: The Agreed Final Judgment is in favor of Harris County, Texas and the State in the amount of Thirty Two Thousand Seven Hundred Seventy Five Dollars (\$32,775.00), consisting of civil penalties of Thirty Thousand Dollars (\$30,000.00) to be equally divided between Harris County and the State of Texas, and attorney's fees in the amount of Two Thousand Twenty Five Dollars (\$2,025.00) to Harris County, Texas, and Seven Hundred Fifty Dollars (\$750.00) to the State of Texas. Half of the civil penalties are deferred for two years subject to Defendant's future compliance with applicable environmental laws and regulations.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to Michael W. Hughes, Assistant Attorney General, Office of the Texas Attorney General, P. O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication you may contact A.G. Younger, Agency Liaison, at (512) 463-2110.

TRD-200500115

Nancy S. Fuller

Assistant Attorney General

Office of the Attorney General

Filed: January 11, 2005

Texas Building and Procurement Commission

Request for Proposal

RFP Number: #303-5-10573

Opening Date/Time: January 28, 2005 at 3:00 PM

Description: Lease requirement for approximately 1,573 sq. ft. of Office Space in the City of Houston, Chambers or Harris County, Texas

Agency: Texas Parks and Wildlife Department

Purchaser/Contact: Kenneth Ming (512) 463-2743 or through the Electronic State Business Daily at http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=57056

TRD-200500074

Mark Gentle

Legal Counsel

Texas Building and Procurement Commission

Filed: January 7, 2005

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of December 30, 2004, through January 6, 2005. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on January 12, 2005. The public comment period for these projects will close at 5:00 p.m. on February 11, 2005.

FEDERAL AGENCY ACTIONS:

Applicant: Clarence Lewis, Jr.; **Location:** The project is located in jurisdictional wetlands, at 11110 Sportsman Road, in Galveston, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Virginia Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 315315; Northing: 323421. **Project Description:** The applicant requests permission to retain 880 cubic yards of sand placed into jurisdictional wetlands. The applicant proposes to spread the material over his property, sloping the fill to improve runoff into an adjacent pond. To mitigate for impacts to jurisdictional wetlands the applicant proposes to increase the capacity of fresh water in the adjacent pond, add a circulation system to improve water quality. In addition, the applicant proposes to remove invasive species from his property on the north side of Sportsman Road. The applicant proposes to remove fill material placed into wetlands adjacent to

his entrance drive, moving the fill material to an upland site and returning the fill site to pre-impact contours. CCC Project No.: 05-0086-F1; Type of Application: U.S.A.C.E. permit application #23459 is being evaluated under §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Applicant: Jindal United Steel Corporation; Location: The project is located at on the left descending bank of lower Cedar Bayou, at the Jindal United Steel Corporation facility, located off FM 1401, southeast of Baytown, in Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Morgans Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 314722; Northing: 3286899. Project Description: The applicant proposes to perform maintenance dredging at the applicant's facility dock frontage on lower Cedar Bayou. The proposed dredge channel segment measures 1,000 feet long by 125 feet wide, and will be dredged below the existing channel bottom from approximately -5 feet MLW to an average depth of -10 feet MLW. An estimated 25,000 cubic yards will be dredged from the proposed channel segment, and disposed in an upland placement area measuring 300 feet by 200 feet (1.38 acres). As such, the permit applicant is required to conduct a cultural resources survey investigation in order to identify any potential archaeological deposits that may exist within the upland property tract. The complete affected project area (which includes the 1.38-acre upland property tract) measures a total of 4.25 acres. CCC Project No.: 05-0091-F1; Type of Application: U.S.A.C.E. permit application #23571 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Gwen Spriggs, Council Administrative Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or gwen.spriggs@glo.state.tx.us. Comments should be sent to Ms. Spriggs at the above address or by fax at 512/475-0680.

TRD-200500104

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council

Filed: January 10, 2005

Concho Valley Workforce Development Board

Request for Proposal Nursing Survey

Proposal Submission Information and Instructions

The Concho Valley Workforce Development Board is seeking Proposals from professional market research organizations to provide a phone and internet survey of professional nurses in the Concho Valley within three phases. The survey will target approximately 1,200 current healthcare professionals, 55 nurses who have left the field, and approximately 150 non-traditional students to identify issues related to the decrease of individuals' entering healthcare occupations. The survey will provide information to the Partnership for Development of the Health Care Workforce (Partnership). The Partnership is a consortium

of 15 public and private sector organizations that have identified a need for 200 nursing positions annually over the next three to five years to meet the existing demand and replacement job necessary to affect the serious shortage of nurses in the Concho Valley. The project is funded under Wagner-Peyser 7(b) and the purpose is to enhance services to healthcare industry employers, increase emphasis on demand-driven strategies, involve coordination with economic development entities, and is an initiative that focuses on an industry cluster that is in its infancy.

Proposal Process

Authorized Contact: The authorized contact person for this RFP is:

Name: Mary Kay Kuss

Title: Director of Planning and Resource Development

Organization: Concho Valley Workforce Development Board

Mailing Address: 36 E. Twohig, Ste 805, San Angelo, Texas 76903

Telephone: (325) 655-2005

Fax: (325) 482-8900

Email: mary.kuss@twc.state.tx.us

TRD-200500070

Mary Kay Kuss

Director of Planning and Resource Development

Concho Valley Workforce Development Board

Filed: January 7, 2005

Office of Consumer Credit Consumer

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Sections 303.003 and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 01/17/05 - 01/23/05 is 18% for Consumer¹/Agricultural/Commercial²/credit thru \$250,000.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 01/17/05 - 01/23/05 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-200500111

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Consumer

Filed: January 11, 2005

Texas Education Agency

Notice of Correction: Request for Applications Concerning Career and Technology Education Special Populations Project

The Texas Education Agency (TEA) published Request for Applications (RFA) #701-05-02 concerning the Career and Technology Education Special Populations Project in the December 31, 2004, issue of the *Texas Register* (29 TexReg 12338).

The TEA is amending the Eligible Applicants paragraph in the *Texas Register* notice to read, "The Texas Education Agency (TEA) is requesting application under Request for Applications (RFA) #701-05-002." This correction reflects a change from the original RFA number of 701-05-02.

The TEA is amending the Dates of Project paragraph in the *Texas Register* notice to read, "Applicants should plan for a starting date of no earlier than March 15, 2005, and an ending date of no later than May 31, 2006." This correction reflects a change from the original start date of March 1, 2005.

The TEA is amending the Deadline for Receipt of Applications paragraph in the *Texas Register* notice to read, "Applications must be received by the Document Control Center of the TEA by 5:00 p.m. (Central Time), Tuesday, February 8, 2005, to be considered for funding." This correction reflects a change from the original deadline date of Thursday, January 27, 2005.

Further Information. For clarifying information about the RFA, email Career@tea.state.tx.us, Division of Curriculum, Texas Education Agency.

TRD-200500139

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: January 12, 2005



Texas Commission on Environmental Quality

Enforcement Orders

An agreed order was entered regarding Traditional Value Homes, Ltd., Docket No. 2002-0217-EAQ-E on 12/29/2004 assessing \$8,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Wendy Cooper, Staff Attorney at (817) 588-5867, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Clinton Rhodes dba H2O On Tap Water Hauler, Docket No. 2003-0043-PWS-E on 12/29/2004 assessing \$1,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin de Leon, Staff Attorney at (512) 239-6939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Theresa Fitts, Docket No. 2003-1390-AIR-E on 12/29/2004 assessing \$1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gitanjali Yadav, Staff Attorney at (512) 239-2029, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Guadalupe Trevino dba GT Motor & Transmission Shop, Docket No. 2003-1228-WQ-E on 12/29/2004 assessing \$11,550 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lindsay Andrus, Staff Attorney at (512) 239-4761, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Triple R. Foods, Inc. dba PDQ Foods 102, Docket No. 2003-1073-PST-E on 12/29/2004 assessing \$2,850 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lindsay Andrus, Staff Attorney at (512) 239-4761, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Essra Corporation dba Que Paso Food Store, Docket No. 2003-0884-PST-E on 12/29/2004 assessing \$3,960 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lindsay Andrus, Staff Attorney at (512) 239-4761, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Mart, Docket No. 2003-1437-PWS-E on 12/29/2004 assessing \$5,283 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Thang Corporation dba Quick N Save, Docket No. 2002-1313-PST-E on 12/29/2004 assessing \$6,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Wendy Cooper, Staff Attorney at (817) 588-5867, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding V. W. Convenience, Inc. dba Super Stop Food Mart, Docket No. 2003-1096-PST-E on 12/29/2004 assessing \$4,000 in administrative penalties with \$800 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southwest Convenience Stores, LLC dba 7 Eleven 57625, Docket No. 2004-0033-AIR-E on 12/29/2004 assessing \$1,020 in administrative penalties with \$204 deferred.

Information concerning any aspect of this order may be obtained by contacting Mauricio Olaya, Enforcement Coordinator at (915) 834-4967, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ATOFINA Petrochemicals, Inc., Docket No. 2003-1481-AIR-E on 12/29/2004 assessing \$28,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Newpark Shipbuilding-Brady Island, Inc., Docket No. 2003-1502-AIR-E on 12/29/2004 assessing \$7,400 in administrative penalties with \$1,480 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (713) 422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Lubbock, Docket No. 2004-0082-MWD-E on 12/29/2004 assessing \$10,200 in administrative penalties with \$2,040 deferred.

Information concerning any aspect of this order may be obtained by contacting Pam Campbell, Enforcement Coordinator at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Highway Transport, Inc., Docket No. 2003-0778-PST-E on 12/29/2004 assessing \$2,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barbara Klein, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harris County, Docket No. 2003-1353-AIR-E on 12/29/2004 assessing \$1,625 in administrative penalties with \$325 deferred.

Information concerning any aspect of this order may be obtained by contacting Mauricio Olaya, Enforcement Coordinator at (915) 834-4967, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Broaddus Enterprises, Inc., Docket No. 2003-1189-PST-E on 12/29/2004 assessing \$31,500 in administrative penalties with \$6,300 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Degussa Engineered Carbons, L.P., Docket No. 2003-1200-AIR-E on 12/29/2004 assessing \$10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stacey Young, Enforcement Coordinator at (512) 239-1899, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tooter A.H. Schulze, Docket No. 2003-1545-OSS-E on 12/29/2004 assessing \$2,188 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding George Peoples dba Douglas General Store, Docket No. 2003-1547-PST-E on 12/29/2004 assessing \$4,500 in administrative penalties with \$3,900 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rohm and Haas Texas Incorporated, Docket No. 2004-0146-AIR-E on 12/29/2004 assessing \$4,050 in administrative penalties with \$810 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (713) 422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding North Star Steel Texas, Inc., Docket No. 2004-0265-AIR-E on 12/29/2004 assessing \$3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ali Investments, Inc. dba Hawks Pantry 3, Docket No. 2004-0431-PST-E on 12/29/2004 assessing \$2,250 in administrative penalties with \$450 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at (361) 823-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Anthony Constanzo dba Costanzo Fireworks Stand, Docket No. 2004-0334-EAQ-E on 12/29/2004 assessing \$4,000 in administrative penalties with \$800 deferred.

Information concerning any aspect of this order may be obtained by contacting Chris Friesenhahn, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TXSONYA, Inc., Docket No. 2004-0391-PST-E on 12/29/2004 assessing \$7,650 in administrative penalties with \$1,530 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Marshall Holding Group, Inc., Docket No. 2004-0428-IHW-E on 12/29/2004 assessing \$1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dorsett Ditching, Inc. dba Dorsett 221 Truck Stop, Docket No. 2004-0446-PST-E on 12/29/2004 assessing \$6,500 in administrative penalties with \$1,300 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Palo Gaucho, Inc., Docket No. 2004-0478-MWD-E on 12/29/2004 assessing \$3,300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512) 239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nisseki Chemical Texas, Inc., Docket No. 2004-0550-AIR-E on 12/29/2004 assessing \$6,900 in administrative penalties with \$1,380 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at (361) 823-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding K & S Trucks, Ltd., Docket No. 2004-0626-PST-E on 12/29/2004 assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Phat Truong dba L & P Food Market, Docket No. 2004-0676-PST-E on 12/29/2004 assessing \$2,925 in administrative penalties with \$585 deferred.

Information concerning any aspect of this order may be obtained by contacting Lawrence King, Enforcement Coordinator at (512) 239-7037, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Willis, Docket No. 2004-0686-MWD-E on 12/29/2004 assessing \$2,980 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Siva Corporation dba K K Food Mart, Docket No. 2004-0756-PST-E on 12/29/2004 assessing \$4,590 in administrative penalties with \$918 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Angel Brothers Enterprises, Ltd., Docket No. 2004-0848-AIR-E on 12/29/2004 assessing \$1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kent Heath, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Olmito WSC, Docket No. 2004-0854-PWS-E on 12/29/2004 assessing \$500 in administrative penalties with \$100 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512) 239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200500122

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 11, 2005



Notice of Opportunity to Participate in Permitting Matters

A person may request to be added to a mailing list for public notices processed through the Office of the Chief Clerk for air, water, and waste permitting activities at the TCEQ. You may request to be added to: (1) a permanent mailing list for a specific applicant name and permit number; and/or (2) a permanent mailing list for a specific county or counties.

Note that a request to be added to a mailing list for a specific county will result in notification of all permitting matters affecting that particular county.

To be added to a mailing list, send us your name and address, clearly specifying which mailing list(s) to which you wish to be added. Your written request should be sent to the TCEQ, Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, TX 78711-3087.

Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040.

TRD-200500120

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 11, 2005



Notice of Water Quality Applications

The following notices were issued during the period of January 5, 2005 through January 11, 2005.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087, **WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.**

529 #35, LTD. has applied for a renewal of TPDES Permit No. 13484-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located 6,800 feet west of U.S. Highway 290, 2,900 feet south of Farm-to-Market Road 529 (Spencer Road), north of Fisher Road and east of Addicks Fairbanks Road on U.S. 65 in Harris County, Texas.

CITY OF DILLEY has applied for a renewal of TPDES Permit No. 10404-003, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day. The facility is located approximately 3,000 feet east along Crawford Road from the intersection of White Street and Houston Street in Frio County, Texas.

HORNSBY BEND UTILITY COMPANY, INC. has applied for a renewal of TPDES Permit No. 13138-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility is located approximately 1.3 miles south-southeast of the intersection of Farm-to-Market Road 969 and Hunter Bend Road, and approximately 2.3 miles southeast of the intersection of Farm-to-Market Roads 969 and 973 in Travis County, Texas.

CITY OF LOCKHART AND GUADALUPE-BLANCO RIVER AUTHORITY have applied for a renewal of TPDES Permit No. 10210-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,100,000 gallons per day. The facility is located at 108 Larremore Street in the City of Lockhart in Caldwell County, Texas.

WHITESTONE HOUSTON LAND, LTD. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014559001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility is located approximately 3,800 feet south of

the intersection of Roman Forest Boulevard and U. S. Highway 59 in Montgomery County, Texas.

WHITESTONE HOUSTON LAND, LTD., Two Galleria Tower, 13455 Noel Road, Floor 23, Dallas, Texas 75240-6620, has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014560001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility will be located approximately 4,300 feet south of Roman Forest Boulevard and 8,500 feet east of the intersection of U.S. Highway 59 and Caney Creek in Montgomery County, Texas.

TRD-200500121

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 11, 2005



Notice of Water Rights Application

Notice mailed January 6, 2005

APPLICATION NO. 5555B; The Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744-3291, seeks an amendment to a Water Use Permit pursuant to Texas Water Code 11.122 and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) 295.1, et seq. Water Use Permit No. 5555 authorizes the permittee to maintain a 112 acre wetland area with a storage capacity of not to exceed 168 acres-feet of water in Nacogdoches County. The permittee is also authorized to capture the flood flows, in an amount not to exceed 168 acre-feet of water from Moral Creek, Alazan Bayou, and the Angelina River, tributary of the Neches River, Neches River Basin for wetland purposes. An amendment to the permit, designated as Water Use Permit No. 5555A, further authorizes the owner to divert an additional 300 acre-feet of water from Alazan Bayou at a maximum diversion rate of 13.3 cfs (6,000 gpm) to maintain the wetlands. Several priority dates and special conditions apply. Staff supported granting Water Use Permit No. 5555A on a term basis, but the amendment was erroneously issued on a perpetual basis. Pursuant to an upstream contract with the Lower Neches Valley Authority (LNVA), based on LNVA's Certificate of Adjudication No. 06-4411, the Texas Parks and Wildlife Department has applied for an amendment to Water Use Permit No. 5555 for authorization to divert up to 10,000 acre-feet of water from Moral Creek, tributary of Bayou Loco, tributary of the Angelina River, tributary of the Neches River, Neches River Basin for management of wildlife species and associated habitats located in the Alazan Bayou Wildlife Management Area, Nacogdoches County. Water levels will be maintained in the wetlands through the winter months, and all water not consumed will be released back into Moral Creek. Water will be diverted from a point 10.67 miles southwest from the City of Nacogdoches, also being Latitude 31.4895 N, Longitude 94.7469, bearing 132 degrees, 5100 feet from the northwest corner of the Blount Estate Original Survey, Abstract 8555, in Nacogdoches County at a maximum diversion rate of 14.5 cfs (6500 gpm). The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application was received on July 1, 2004. Additional fees and information were received on August 13, October 1, and October 25, 2004. The application was accepted for filing and declared administratively complete on November 3, 2004. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in an application.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200500119

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 11, 2005



Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on January 10, 2005, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Wendell Reeder, Clarksville, Oil & Gas Co., Midway Armadillo Corporation, Harry M. Fox dba H & F Realty, and Feroz Abdul Sattar dba Key Food Truck Stop; SOAH Docket No. 582-01-2912; TCEQ Docket No. 1999-1048-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Wendell Reeder, Clarksville, Oil & Gas Co., Midway Armadillo Corporation, Harry M. Fox dba H & F Realty, and Feroz Abdul Sattar dba Key Food Truck Stop on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguía, Office of the Chief Clerk, (512) 239-3300.

TRD-200500123

LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 11, 2005

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Department of State Health Services

Notice of Agreed Order with Apex Geoscience, Inc.

On January 10, 2005, the Radiation Program Officer, Department of State Health Services (department), approved the settlement agreement between the department and Apex Geoscience, Inc. (licensee-L04929) of Tyler. A total administrative penalty in the amount of \$4,500 was assessed the licensee for violations of 25 Texas Administrative Code, Chapter 289. Of the total administrative penalty, \$2,500 will be probated for a period of one year, and will be forgiven if the registrant complies with additional settlement agreement requirements.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200500126
Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: January 12, 2005

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Notice of Default Order Against Dwayne Lackey, D.D.S.

On January 10, 2005, the Radiation Program Officer, Department of State Health Services (department), signed a Default Order against Dwayne Lackey, D.D.S. (unregistered) of Terrell. A total administrative penalty in the amount of \$8,000 was assessed Doctor Lackey for violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200500127
Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: January 12, 2005

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Notice of Default Order Against Eastex Veterinary Clinic

On January 10, 2005, the Radiation Program Officer, Department of State Health Services (department), signed a Default Order against Eastex Veterinary Clinic (unregistered) of Beaumont. A total administrative penalty in the amount of \$8,000 was assessed the clinic for violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200500128

Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: January 12, 2005

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Notice of Default Order Against Heart Institute for C.A.R.E., P.A.

On January 10, 2005, the Radiation Program Officer, Department of State Health Services (department), signed a Default Order against Heart Institute for C.A.R.E., P.A. (registrant - R04712) of Amarillo. A total administrative penalty in the amount of \$9,000 was assessed the registrant for violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200500129
Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: January 12, 2005

◆ ◆ ◆
Notice of Default Order Against Onys Burke Henley, dba Henley Enterprises

On January 10, 2005, the Radiation Program Officer, Department of State Health Services (department), signed a Default Order against Onys Burke Henley, doing business as Henley Enterprises (licensee - L05372) of Waco. A total administrative penalty in the amount of \$4,000 was assessed the licensee for violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200500130
Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: January 12, 2005

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Notice of Request for Proposals for Zoonosis Control Group's Animal Friendly Grants for the Spay/Neuter Project

INTRODUCTION

The Department of State Health Services (department), Zoonosis Control Group announces a Request for Proposals (RFP) for the sterilization of dogs and cats owned by the public. The RFP will be released on or about February 1, 2005.

PURPOSE

The department's Zoonosis Control Group announces the expected availability of fiscal year 2006 state funds from the sale of Animal Friendly license plates to provide grants for the sterilization of dogs and cats owned by the public at no or minimal cost.

PERIOD OF PROJECT

It is expected that the contract will begin on or about September 1, 2005, and will be made for a twelve-month budget period within a project period of two years.

AVAILABLE FUNDS

Approximately \$250,000 is expected to be available to fund multiple contracts. One grant award per project period will be awarded per agency for the sterilization of dogs and/or cats in a minimum amount of \$1,000 to a maximum amount of \$50,000 per contract period. The specific dollar amount awarded to each applicant depends upon the merit and scope of the proposed project.

ELIGIBLE APPLICANTS

Eligible applicants include: a private or public animal shelter (releasing agency); an organization that is qualified as a charitable organization under Internal Revenue Code, §501(c)(3), that has animal welfare or sterilizing dogs and cats owned by the general public at minimal or no cost as its primary purpose; or a local nonprofit veterinary medical association - an organization setup by and comprised of several volunteer veterinarians in their immediate region for the purpose of presenting continuing education, planning group activities, or discussing issues common to their professional field, and has an established program for sterilizing dogs and cats owned by the general public at minimal or no cost. If an applicant is currently debarred, suspended, or otherwise excluded or ineligible for participation in federal or state assistance programs, the applicant is ineligible to apply for funds under this RFP.

SCHEDULE OF EVENTS

Issuance of the RFP on or about February 1, 2005

Application Deadline on or about March 28, 2005

Award Notification on or about May 11, 2005

Contract Start Date on or about September 1, 2005

TO OBTAIN A COPY OF THE RFP

All agencies that plan to submit an application are requested to submit a Letter of Intent, on their official letterhead, to Pamela Ferguson, Enterprise Contract and Procurement Services Division, Room T-502, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3199. The deadline for submitting Letters of Intent is 2:00 p.m., Central Standard Time, on January 24, 2005. **NOTE:** Submitting a Letter of Intent does not commit the agency to submitting a proposal.

It is preferred that a request to obtain a copy of the RFP, scheduled for release on or about February 1, 2005, be downloaded from DSHS'S, Zoonosis Control Group's website at www.tdh.state.tx.us/zoonosis/RESPPET/anifriend/anifrien.asp, or the Electronic State Business Daily (ESBD) website at <http://esbd.tbpc.state.tx.us>. Those organizations without Internet access may obtain a copy of the RFP by contacting their regional Department of State Health Services Zoonosis Control Program.

CONTACT PERSON

All communications concerning the RFP shall be addressed in writing, by fax or by E-mail to Pamela Ferguson, Enterprise Contract and Procurement Services Division, Room T-502, Department of State Health Services, 1100 West 49th Street, Austin, Texas, 78756-3199, Fax: (512) 458-7351, e-mail: pam.ferguson@dshs.state.tx.us.

TRD-200500131

Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: January 12, 2005

Texas Department of Housing and Community Affairs

Multifamily Housing Revenue Bonds (Langwick Senior Community) Series 2005

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Calvery Elementary School, 1925 Marvel Drive, Houston, Texas 77032, at 6:00 p.m. on February 7, 2005 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed \$13,350,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Langwick Seniors, L.P., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing and equipping a multifamily housing development (the "Development") described as follows: 248-unit multifamily residential rental development to be located approximately the 900 block of Langwick Drive, Harris County, Texas. The Development initially will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Robbye Meyer at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-2213; and/or robbye.meyer@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robbye Meyer in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robbye Meyer prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Robbye Meyer at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200500137
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: January 12, 2005

Multifamily Housing Revenue Bonds (Rolling Creek Apartments) Series 2005

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Bane Elementary School, 5805 Kaiser, Houston, Texas 77040, at 6:00 p.m. on February 15, 2005 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed \$14,160,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the

"Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Rolling Creek Apartments, LP, a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing and equipping a multifamily housing development (the "Development") described as follows: 248-unit multifamily residential rental development to be located at approximately the 7800 block of Fairbanks North Houston Road approximately 315 feet north of the northeast corner of Fairbanks North Houston Road and Summertree Drive, Harris County, Texas. The Development initially will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Robbye Meyer at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-2213; and/or robbye.meyer@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robbye Meyer in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robbye Meyer prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Robbye Meyer at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200500136
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: January 12, 2005



Multifamily Housing Revenue Bonds (Tower Ridge Apartments) Series 2005

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Corinth Elementary School, 3501 Cliff Oaks Drive, Corinth, Texas 76210, at 6:00 p.m. on February 8, 2005 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed \$15,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Tower Ridge Corinth I, Ltd., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing and equipping a multifamily housing development (the "Development") described as follows: 224-unit multifamily residential rental development to be located on the west side of Tower Ridge Road, approximately the 2000 block of Tower Ridge Road, Denton County, Texas. The Development initially will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Robbye Meyer at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-2213; and/or robbye.meyer@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robbye Meyer in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robbye Meyer prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Robbye Meyer at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200500138
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: January 12, 2005



Multifamily Housing Revenue Bonds (Willow Creek Apartments) Series 2005

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Northpointe Intermediate School, 11855 Northpointe Boulevard, Tomball, Texas 77377, at 6:00 p.m. on February 16, 2005 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed \$14,100,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Willow Creek Apartments, L.P., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing and equipping a multifamily housing development (the "Development") described as follows: 248-unit multifamily residential rental development to be located at 11743 Northpointe Boulevard, Harris County, Texas. The Development initially will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Robbye Meyer at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-2213; and/or robbye.meyer@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robbye Meyer in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robbye Meyer prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Robbye Meyer at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200500135

Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: January 12, 2005

◆ ◆ ◆
Notice of Funding Availability

HOME Investment Partnerships Program

PY 2005 Contract for Deed Conversion Funding Cycle

The Texas Department of Housing and Community Affairs (Department) announces the availability of approximately \$6,000,000 for the 2005 Contract for Deed Conversion Set Aside funding cycle for the HOME Investment Partnerships Program (HOME). The availability and use of these funds is subject to the State HOME Rules (10 TAC Chapter 53) and the Federal HOME regulations governing the HOME Program (24 CFR Part 92).

ALLOCATION OF HOME CONTRACT FOR DEED CONVERSION FUNDS (CFDC)

The HOME Program provides state and local government with choices in respect to the allocation of HOME funds. The 78th Texas Legislature passed Appropriations Rider 10: a legislative directive requiring the Department to spend no less than \$4 million for the biennium on contract for deed conversions for families that reside in a Colonia and earn less than 60 percent of the Area Median Family Income (AMFI). The CFDC Program helps Colonia families convert their contract for deed into a traditional note and deed.

Eligible homeowners must be permanent residents of the United States. The property must be located in a Colonia as defined in Section 2306.581, Texas Government Code. A Colonia is defined as a geographic area located in a county some part of which is within 150 miles of the international border of this state that has a majority population composed of individuals and families of low income and very low income, based on the federal Office of Management and Budget poverty index, and meets the qualifications of an economically distressed area under §17.921, Texas Water Code; or has the physical and economic characteristics of a Colonia, as determined by the Texas Water Development Board.

ELIGIBLE ACTIVITIES

The Contract for Deed Conversion Set Aside funds will be awarded on a first-come, first-serve basis to provide acquisition assistance to convert a contract for deed to a conventional note and deed, or acquisition assistance to convert a contract for deed to a conventional note and deed and assistance to rehabilitate the unit.

* Acquisition, in the form of costs related to the prepayment of existing contract for deeds and costs related to the conversion; or

* Acquisition and Rehabilitation, in the form of costs related to the prepayment of existing contract for deed and costs related to the conversion, and rehabilitation costs associated with bringing the home up to Colonia Housing Standards.

ELIGIBLE APPLICANTS

The Department provides HOME funds for the Contract for Deed Conversion Set-a-Side to the following eligible recipients:

- * Units of General Local Government;
- * Nonprofits; and
- * Public Housing Authorities (PHAs).

Under the Contract for Deed Conversion Set-a-Side, the Department will provide grant or loan funds to eligible Colonia residents for contract for deed conversion, to extremely low and very low income individuals and families.

The Department will score applications on a first-come, first-serve basis and make funding recommendations based on the availability of funds.

Funds will be awarded in accordance with the rules and procedures as set forth in the State of Texas HOME Program rules at 10 TAC §§53.50-53.63.

DESCRIPTION OF ACTIVITY

Under the HOME Contract for Deed Conversion Set Aside, the Department will provide grant or loan funds to eligible recipients for contract for deed conversion or Contract for Deed Conversion with rehabilitation in order to, at a minimum, bring the unit up to Colonia Housing Standards.

Approximately \$6,000,000 of HOME Contract for Deed Conversion funds is available. CFDC funds are not subject to the Regional Allocation Formula.

COMPETITIVE REVIEW OF APPLICATIONS

HOME project funds will be awarded per State of Texas HOME Program Rules, 10 TAC §§53.50-53.63. General Selection Criteria is listed in the State of Texas HOME Program Rules, 10 TAC §§53.50-53.63 and forms the basis for the State's development of scoring criteria for each Activity. Scoring criteria will include the implementation of various bills, riders, and agency goals, which will be defined in the application process. The Department will conduct the review and scoring of all applications, and make recommendations for funding.

SELECTION PROCESS

All applications for funds received are reviewed for threshold requirements regarding application documentation and compliance with Department requirements of previously awarded contracts. Qualifying applications are then scored using scoring criteria that reflects the Department's housing priorities. Applicants are recommended for funding if the score exceeds the minimum score established in the State of Texas HOME Program rules, on a first-come, first-serve basis up to the limit of funds available.

APPLICATION PROCEDURES, FINAL FILING

The HOME Application Guide will be available on the Department's website at www.tdhca.state.tx.us on Friday, February 11, 2005, under What's New or you may call (512) 475-3993 to request an application copy on or after Friday, February 11, 2005. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

There is no deadline for submitting a COMPLETE application and application fee. A complete application should be submitted when the Applicant is ready to administer a program. The FY 2005 Contract for Deed Conversion funding cycle will remain opened until all funds have been awarded. The Department will be accepting applications on an ongoing basis. Applications will be accepted on an ongoing basis until all funds have been awarded, or until the current state fiscal year ends on Wednesday, August 31st, 2005. Applications will be accepted, reviewed and recommended to the Department's Board in accordance with Department's process for handling Open Cycle Applications detailed at §53.58 of the HOME Rule. Applications will not be accepted through facsimile.

Applications mailed via the U.S. Postal Service must *must* be mailed to:

Texas Department of Housing & Community Affairs
Single Family Finance Production Division
P.O. Box 13941

Austin, Texas 78711-3941

Applications mailed by private carrier or hand-delivered will be received at the physical address of:

Texas Department of Housing & Community Affairs
Single Family Finance Production Division
507 Sabine, Suite 700

Austin, Texas 78701

Applications will not be accepted through facsimile.

Applicants are required to remit a non-refundable application fee payable to the Texas Department of Housing and Community Affairs in the amount of \$30.00 per application. Please send check, cashier's check or money order; do not send cash. Section 2306.147(b) of the Texas Government Code requires the Department to waive grant application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status in lieu of the application fee. The application fee is not an eligible or reimbursable cost under the HOME Program.

Applications that do not meet the filing and application fee requirements will be returned to the Applicant and will not be considered for funding.

If an application contains deficiencies which, in the determination of Department staff, require clarification or correction of information submitted at the time of application, staff may request clarification or correction of such deficiencies. The Department may request clarification or correction in a deficiency notice in the form of a facsimile and a telephone call to the Applicant advising that such a request has been transmitted. If deficiencies are not clarified or corrected to the satisfaction of the Department within five business days of the deficiency notice date, five points shall be deducted from the score for each day the deficiency remains unresolved. If deficiencies are not clarified or corrected within seven business days from the deficiency notice date, then the application shall be terminated. The time period for responding to a deficiency notice begins at the start of the business day following the deficiency notice date.

An Applicant may appeal decisions made by the Department in accordance with 10 TAC Sections 1.7-1.8.

This NOFA does not include text of the various applicable regulatory provisions that may be important to the HOME Contract for Deed Conversion Program. For proper completion of the application, the Department strongly encourages potential Applicants to review the State and Federal regulations and to attend application training workshops.

APPLICATION WORKSHOPS

The Department will present one-day HOME Program Application Workshops that will provide an overview of the HOME Program and exclusively address the Contract for Deed Conversion Set Aside, application preparation and submission, evaluation criteria and information about the major Federal and State requirements that may affect a HOME project. The HOME Contract for Deed Conversion Application Workshop schedule and registration will be posted on the Department's website at www.tdhca.state.tx.us on Friday, January 28, 2005.

RESOLUTION REQUIREMENTS

The Department requires that all applications submitted must include a resolution from the Applicant's direct governing body (Board of Directors) authorizing the submission of the application.

AUDIT REQUIREMENTS

An Applicant is not eligible to apply for funds or any other assistance from the Department unless past audit or Audit Certification Form has been submitted to the Department in a satisfactory format on or before the application deadline for funds or other assistance per 10 TAC §1.3(b). This is a threshold requirement outlined in the application, therefore applications that have outstanding past audits will be disqualified. Staff will not recommend applications for funding to the Department's Governing Board unless all unresolved audit findings, questions or disallowed costs are resolved per 10 TAC §1.3(c).

Individuals who require auxiliary aids or services should contact Gina Esteves, ADA Responsible Employee, at least two days before the scheduled workshop, at (512) 475-3943, or Relay Texas at 1-800-735-2989, so that appropriate arrangements can be made.

TRD-200500141

Edwina P. Carrington

Executive Director

Texas Department of Housing and Community Affairs

Filed: January 12, 2005



Notice of Funding Availability

HOME Investment Partnerships Program

PY 2005 Single Family Funding Cycle

The Texas Department of Housing and Community Affairs (Department) announces the availability of approximately \$31,500,000 for the 2005 Single Family funding cycle for the HOME Investment Partnerships Program (HOME). The availability and use of these funds is subject to the State HOME Rules (10 TAC Chapter 53) and the Federal HOME regulations governing the HOME Program (24 CFR Part 92).

ALLOCATION OF PY 2005 FUNDS

Section 2306.111, Texas Government Code, mandates the Department to allocate housing funds awarded in the HOME Program to each Uniform State Service Region using the Regional Allocation Formula, developed by the Department.

Section 2306.111, Texas Government Code, also mandates the Department to allocate no less than 95 percent of the HOME Program Funds to applicants which serve households located in a non-participating jurisdiction (non-PJ). In addition, five percent of the HOME Program Funds are to be allocated to applicants serving persons with disabilities through either Multifamily or Single Family Activities. However, no Single Family Activities will be funded in a participating jurisdiction. All housing related applications intended to serve persons with disabilities must adhere to the Department's Integrated Housing Rule.

The Department has a goal of allocating 20% of the annual HOME allocation to applicants serving persons with special needs. Eligible applicants include nonprofits, units of general local government, and PHAs with documented histories of working with special needs populations. Eligible Activities include homebuyer assistance, owner occupied housing assistance, and tenant based rental assistance. Scoring criteria may be established under each of the eligible Activities to assist the Department in reaching its goal.

ELIGIBLE APPLICANTS

Units of General Local Government

Nonprofit Organizations

Public Housing Agencies (PHAs)

DESCRIPTION OF ACTIVITIES

American Dream Downpayment Initiative (ADDI)

Downpayment and closing cost assistance is provided to first time homebuyers for the acquisition of affordable single family housing.

Eligible first time homebuyers may receive loans up to \$10,000 for down payment and closing costs. ADDI assistance will be in the form of a 2nd or 3rd lien, 0% interest, 10-year deferred forgivable loan. The loans are to be repaid at the time of resale of the property, refinancing of the first lien, repayment of the first lien, or if the unit ceases to be the assisted homebuyer's principal residence, if any of these occurs before the end of the 10-year term. The amount of recapture will be based on the pro-rata share of the remaining loan term.

At the completion of the assistance, all properties must meet all applicable codes and standards, as specified in the application guide. Compliance with the basic access standards in new construction, established by §2306.514, Texas Government Code, is also required for any applicants utilizing Federal or State money administered by the Department in the construction of single family homes.

For PY 2005 funds, approximately \$5,500,000 of ADDI funds are available. ADDI funds are not subject to the Regional Allocation Formula.

Owner Occupied Housing Assistance (OCC)

Rehabilitation or reconstruction cost assistance, in the form of grants or loans, is provided to homeowners for the repair or reconstruction of their existing homes. The homes must be the principal residence of the homeowner.

At the completion of the assistance, all properties must meet all applicable codes and standards, as specified in the application guide. In addition, all housing that is reconstructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with 24 CFR 92.251(a). If a home is reconstructed, the applicant must also ensure compliance with the universal design features in new construction, established by §2306.514, Texas Government Code, required for any applicants utilizing federal or state money administered by the Department in the construction of single family homes.

This activity will comprise 80% of the HOME allocation that will be available through the Regional Allocation Formula process, approximately \$20,800,000.

Tenant Based Rental Assistance (TBRA)

Rental subsidy and security and utility deposit assistance is provided to tenants, in accordance with written tenant selection policies, for a period not to exceed twenty four months. TBRA allows the assisted tenant to move to and live in any dwelling unit with a right to continued assistance with the condition that assisted families participate in a Self-Sufficiency Program.

This activity will comprise 20% of the HOME allocation that will be available through the Regional Allocation Formula process, approximately \$5,200,000.

COMPETITIVE REVIEW OF APPLICATIONS

HOME project funds will be awarded competitively per State of Texas HOME Program Rules, 10 TAC §§53.50 - 53.63. General Selection Criteria is listed in the State of Texas HOME Program Rules, 10 TAC

§§53.50 - 53.63 and forms the basis for the State's development of scoring criteria for each Activity. Scoring criteria will include the implementation of various bills, riders, and agency goals, which will be defined in the application process. The Department will conduct the review and scoring of all applications, by region where applicable, and make recommendations for funding.

SELECTION PROCESS

All applications for funds received are reviewed for threshold requirements regarding application documentation and compliance with Department requirements of previously awarded contracts. Qualifying applications are then ranked using scoring criteria that reflects the Department's housing priorities. Applicants are recommended for funding if the score exceeds the minimum score established in the State of Texas HOME Program rules. The highest scoring OCC and TBRA applicants will be recommended up to the limit of funds available per region, and area type. Should an Activity not have enough qualified applicants, the funds will be redirected to the next Activity in the region that had a higher number of qualified applicants. The highest scoring ADDI applicants will be recommended up to the limit of funds available statewide.

APPLICATION PROCEDURES, FINAL FILING

The HOME Application Guide will be available on the Department's website at www.tdhca.state.tx.us on Friday, February 11, 2005, or you may call (512) 475-3993 to request an application copy on or after Friday, February 11, 2005. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

Deadline date for submitting a COMPLETE application and application fee is Friday, April 29, 2005, at 5:00 pm CST. Regardless if an application is hand-delivered, mailed through the U.S. Postal Service, or sent through a private carrier such as Federal Express or Airborne, the application must be received by the Department no later than Friday, April 29, 2005, at 5:00pm CST. Applications will not be accepted through facsimile.

Applications mailed via the U.S. Postal Service *must* be mailed to:

Texas Department of Housing and Community Affairs

Single Family Finance Production Division

P.O. Box 13941

Austin, Texas 78711-3941

Applications mailed by private carrier or hand-delivered will be received at the physical address of:

Texas Department of Housing and Community Affairs

Single Family Finance Production Division

507 Sabine, Suite 700

Austin, Texas 78701

Applicants are required to remit a non-refundable application fee payable to the Texas Department of Housing and Community Affairs in the amount of \$30 per application. Please send check, cashier's check or money order; do not send cash. Section 2306.147(b) of the Texas Government Code requires the Department to waive grant application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status in lieu of the application fee. The application fee is not an eligible or reimbursable cost under the HOME Program.

Applications that do not meet the filing deadline and application fee requirements will be returned to the applicant and will not be considered for funding.

If an application contains deficiencies which, in the determination of Department staff, require clarification or correction of information submitted at the time of application, staff may request clarification or correction of such deficiencies. The Department may request clarification or correction in a deficiency notice in the form of a facsimile and a telephone call to the applicant advising that such a request has been transmitted. If deficiencies are not clarified or corrected to the satisfaction of the Department within five business days of the deficiency notice date, five points shall be deducted from the score for each day the deficiency remains unresolved. If deficiencies are not clarified or corrected within seven business days from the deficiency notice date, then the application shall be terminated. The time period for responding to a deficiency notice begins at the start of the business day following the deficiency notice date.

An applicant may appeal decisions made by the Department in accordance with 10 TAC §1.7 and §1.8.

This Notice of Funding Availability does not include text of the various applicable regulatory provisions that may be important to the HOME Program. For proper completion of the application, the Department strongly encourages potential applicants to review the State and Federal regulations and to attend application training workshops.

Application Workshops

The Department will present one-day HOME Program Application Workshops that will provide an overview of the HOME Program, application preparation and submission, evaluation criteria and information about the major Federal and State requirements that may affect a HOME project. The HOME Application Workshop schedule and registration will be posted on the Department's website at www.tdhca.state.tx.us on Friday, January 28, 2005.

Resolution Requirements

The Department requires that all applications submitted must include a resolution from the applicant's direct governing body (Board of Directors) authorizing the submission of the application.

Audit Requirements

An applicant is not eligible to apply for funds or any other assistance from the Department unless a past audit or Audit Certification Form has been submitted to the Department in a satisfactory format on or before the application deadline for funds or other assistance per 10 TAC §1.3(b). This is a threshold requirement outlined in the application, therefore applications that have outstanding past audits will be disqualified. Staff will not recommend applications for funding to the Department's Governing Board unless all unresolved audit findings, questions or disallowed costs are resolved per 10 TAC §1.3(c).

TRD-200500134

Edwina P. Carrington

Executive Director

Texas Department of Housing and Community Affairs

Filed: January 12, 2005



Notice of Funding Availability (NOFA) 2005 Housing Trust Fund Rental Development Program

Multifamily Finance Production Division

The Texas Department of Housing and Community Affairs, through its Housing Trust Fund (HTF), is pleased to announce the availability of Four Million Dollars (\$4,000,000) to finance, acquire, rehabilitate, and develop safe, decent and affordable rental housing for low, very low, and extremely low income individuals and families; including persons with special needs.

The Housing Trust Funds available through this NOFA will be awarded as loans and are best designed to provide gap financing to eligible multifamily rental developments. Funds will be awarded consistent with the Department's Regional Allocation Formula as required by §2306.111(d) of the Texas Government Code. Eligible Applicants include local units of government, public housing authorities, community housing development organizations, nonprofit organizations and for profit entities. TDHCA will reject any proposal violating §51.6 of the Housing Trust Fund rules regarding Ineligible Activities and Restrictions.

Applications must comply with the Housing Trust Fund Rules, this NOFA and the Housing Trust Fund Application Submission Procedures Manual. Applications that satisfy the eligibility criteria and threshold criteria will then be evaluated for material noncompliance, and scored according to the selection criteria outlined in the following section. Because the allocation of funding is subject to the Department's Regional Allocation Formula, each applicant will be ranked based on score and will compete against all other applications within the same Uniform State Service Region. Any funding not allocated within a specific region may be combined into other state service regions to fulfill the funding needs of the highest scoring applicants. Because of the limited funds available, each region has not been further subdivided into rural and urban/exurban allocations; however, consistent with overall statewide urban/exurban and rural allocation goals, the Department will make the first award in each region to the highest scoring rural applicant, except in regions where there are no eligible rural applications. Therefore, the highest scoring rural applicant will be granted the first award from each region based on available funding. After the top scoring rural applicant has been awarded funds, all remaining applicants will be awarded funding based on score and availability of funding within the region, regardless of their location in a rural or urban/exurban area.

Table 1: Housing Trust Fund Regional Allocation Formula

Region	Place for Geographical Reference	Regional Funding Amount	Regional Funding %
1	Lubbock	\$172,226	4.3%
2	Abilene	\$111,601	2.8%
3	Dallas/Fort Worth	\$736,351	18.4%
4	Tyler	\$198,665	5.0%
5	Beaumont	\$119,571	3.0%
6	Houston	\$778,071	19.5%
7	Austin/Round Rock	\$281,514	7.0%
8	Waco	\$239,032	6.0%
9	San Antonio	\$323,265	8.1%
10	Corpus Christi	\$198,952	5.0%
11	Brownsville/Harlingen	\$516,154	12.9%
12	San Angelo	\$118,059	3.0%
13	El Paso	\$206,539	5.2%
	Total	\$4,000,000	100.0%

Threshold Criteria

Threshold criteria for all applicants to the HTF Rental Development program are based on the criteria outlined in the HTF Rule at §§51.5 - 51.9, criteria detailed in this NOFA, and any additional criteria detailed in the HTF application manual. The following items are specific threshold requirements that applicants should be aware of:

Public Notifications: Applicants are required to fulfill the public notification requirements detailed under §49.9(f)(8)(A) of the QAP with the exception that applicants are not required to provide notification to local elected officials for Neighborhood Organizations Input as detailed by §49.9(f)(8)(A)(ii)(I) of the QAP.

Minimum Unit Set-Aside: All development proposals must set-aside at least 50% of the planned units in every development for persons earning at least 60% or less of the area median family income. Rents for all set-aside units are required to be affordable to the target population's income, as determined by the Department on an annual basis. Applicants should consult the HTF rent and income limitations posted on the Department's website and in the HTF Application Reference Manual.

Experience Certification: Applicants will be required to submit evidence of experience in housing development; the type of evidence needed is outlined in §49.9(e)(1) of the 2005 QAP. Applicants proposing a development of 36 or less units must provide evidence of having developed, through new construction or rehabilitation, 10 or more units of residential housing within the past 10 years. Applicants proposing to develop more than 36 units are required to meet the developer certification standards as provided under the QAP at §49.9(e)(1)(A). The certification forms and process is outlined in the HTF application submission manual.

Additional Certifications: Applicants will be required to certify that no current affordable housing tenants will be displaced and that opportunities for training and employment shall be given to low, very low, and extremely low income persons residing within the area in which the project is located, when feasible, as required by §51.6(a) and §51.9(a) respectively.

As noted in the examples above, Applicants applying for only HTF funds will find additional details on threshold requirements in the HTF application manual. Applicant submitting applications to multiple programs must meet all the requirements of the more restrictive program

(i.e. an applicant for Tax Credits and HTF must meet all the requirements of the 2005 QAP and the exceptions noted for HTF are not applicable). Applicants are also encouraged to contact Department staff if they have any questions regarding their submissions.

Scoring Criteria

The following is a list of the criteria that will be used:

Housing Needs: Applicants may receive up to 15 points for showing that their proposed project is consistent with local planning and on the Affordable Housing Needs Score for the place or county for which the Development is located. Applicants who can show that the development will be consistent or meet the affordable housing needs of the local municipality or community where it will be located will receive 8 points. Proof must be in the form of a letter from the local public official responsible for creation of the community's Comprehensive Plan, Consolidated Plan, or other planning documents that describe the housing needs of the community; or a letter from the community's mayor, chief executive officer (city manager), or County judge, which states that the community does not have a comprehensive housing plan but that they support the proposed development.

Applicants may receive up to 7 additional points for the Affordable Housing Needs Score for the place or county for which the Development is located. The housing needs score can be found in the Housing Trust Fund Application Reference Manual.

Targeting of Extremely Low-Income Populations: Applicants may receive up to 15 points for reserving a portion of their units for persons earning 30% or less of the Area Median Family Income (AMFI). Applicants who reserve at least 5% of their total units for persons earning 30% or less of the AMFI shall receive 10 points. Applicants who reserve at least 10% of their total units for persons earning 30% or less of the AMFI shall receive 15 points. Reserved units will be required to meet the HTF rent and income limitations published by the Department, and will be required by the LURA.

Support from Public Officials: Applicants may receive a total of 6 points for letter of support from local officials. To qualify for points Applicants must submit letters of support from the State Representative and State Senator for the districts where the development is located. Applicants will receive 3 points, a maximum of 6 points, for each letter of support received by the Department by April 1, 2005.

Leveraging of Public and Private Financing: Applicants may receive up to 10 points for the extent to which the development will leverage the HTF with other resources, including federal resources and private sector funds, which may include commercial lenders. Applicants will receive 3 points if the percentage of Housing Trust Funds is less than 30% of total development costs. Applicants will receive 6 points if the percentage of Housing Trust Funds is less than 15% of total development costs. Applicants will receive 9 points if the percentage of Housing Trust funds is less than 5% of the total development costs. Applicants must provide evidence in the form of a commitment letter or funding agreement which clearly states the rates, terms and conditions of at least one leveraging resource and outline the total percentage of HTF funds in the development.

Supportive Services to Tenants: Applicants who provide supportive services to tenants may be eligible to receive up to 6 points. Six (6) points will be awarded for the provision of three (3) supportive services. Four (4) points will be awarded for the provision of two (2) supportive services. Two (2) points will be awarded for the provision of one (1) supportive service. Applicants will be required to certify that they will provide a combination of special supportive services appropriate for the proposed tenants. No fees can or will be charged to tenants for any of the services. Services must be provided on-site or transportation to off-site services must be provided free of charge. A list of acceptable supportive services will be provided in the HTF manual.

Site Characteristics: Applicants may receive 5 points for proposing developments that are located near community services which the Department has identified as being important to tenant needs. Applicant must show that at least four of the identified services are within one mile of the proposed development site for Urban/Exurban developments, or 2 miles for Rural Developments. The list of services and process for identifying the location and existence of services will be detailed in the HTF application submission manual.

Accessible Housing Design: Applicants may receive 5 points for building at least 10% of their proposed units to be accessible for persons with mobility impairments. The units must be designed to meet Fair Housing Accessibility and Section 504 Accessibility Standards. Applicants will not be required to set-aside units for persons with disabilities, but must make them available to eligible tenants in accordance with the provisions of Section 504 of the 1973 Rehabilitation Act.

Targeting of Special Needs Populations: Applicants may receive 5 points for reserving at least 10% of the proposed units for special needs populations as defined by the Housing Trust Fund Rule at §51.3(18). Applicants serving persons with disabilities must also conform to the Department's Integrated Housing Rule and may not receive points under the Accessible Housing Design criterion.

Cost Effectiveness of Project - (tie breaker criteria): The Department will evaluate applicants on the cost effectiveness of their developments in the event of a tie. The Department has determined that the total subsidy per unit of Housing Trust Fund dollars will be the determining factor. In the case of a tie, the Applicant with the lower cost effectiveness value will be awarded funding. To calculate this number the Department will use the following equation.

Total HTF Funds Requested/Total Number of Low-Income Units to be Set-Aside = Cost Effectiveness

Example: if Applicant A has requested \$500,000 for a development that will set-aside 40 units for HTF their cost effectiveness value would be \$12,500. If Applicant B has requested \$400,000 for a development that will set-aside 50 units for HTF their cost effectiveness value would be \$8,000. In this case, with each applicant having the same score on all previous scoring criteria, Applicant B would be awarded funding.

Applicants should consult the Department prior to submission of an application package if they have any concerns or questions regarding the threshold or scoring criteria.

Additional Information

The Department's Board of Directors reserves the right to change the award amount, and to award more or less than the requested amount. All Housing Trust Fund dollars expended on a development that is canceled prior to completion must be repaid to the Department by the Borrower. The Department will not review applications involving the refinancing of previously assisted developments not at risk of losing their affordability. All developments financed through the Housing Trust Fund must adhere to the Department's Integrated Housing Rule and the Housing Trust Fund Property Standards.

Applicants are required to remit a non-refundable application fee at the time of application submission payable to the Texas Department of Housing and Community Affairs in the amount of \$5.00 per unit for the proposed development. Payment must be in the form of a check, cashier's check or money order. Section 2306.147(b) of the Texas Government Code requires the Department to waive application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the application fee.

All interested parties are encouraged to participate in this program. The application and reference materials will be available on the Multifamily Division's section of the Department's web site at www.td-hca.state.tx.us for the use of applicants at the time the NOFA is released in final form. For additional information please call the Multifamily Finance Production Division Office at (512) 475-3340, check the Department's web site or e-mail your request to emily.price@td-hca.state.tx.us. Applicants should note §51.6 of the HTF Rule regarding restrictions on communication to ensure no violations of the rule occur. Please direct your applications to:

Texas Department of Housing and Community Affairs

Multifamily Finance Production Division

Post Office Box 13941

Austin, Texas 78711-3941

Or by courier to:

507 Sabine, Suite 700

Austin, Texas 78701

Applications must be submitted on or before 5:00 p.m., March 1, 2005.

FAXED APPLICATIONS WILL NOT BE ACCEPTED.

TRD-200500086

Edwina Carrington

Executive Director

Texas Department of Housing and Community Affairs

Filed: January 10, 2005



Notice of Funding Availability (NOFA) Community Housing
Development Organization Housing Development Open
Funding Cycle

HOME Investment Partnerships Program

The Texas Department of Housing and Community Affairs ("the Department") announces the availability of approximately \$13,000,000 in federal funding from the HOME Investment Partnerships Program (HOME) for Community Housing Development Organizations (CHDOs) to develop affordable housing for low-income Texans. The availability and use of these funds is subject to the State HOME Rules at 10 TAC Chapter 53 ("HOME Rules"), the Federal HOME regulations governing the HOME program (24 CFR Part 92), and any other federal or state regulation that may apply to the development and operation of affordable housing units.

Allocation of HOME CHDO Funds

CHDO funding is made available as a set-aside from the annual federal allocation of HOME funds to the Department. All funds released under this NOFA are to be used for the creation of affordable housing for low-income Texans earning 80 percent or less than the Area Median Family Income (AMFI) for the locality where the proposed development is located. Only rental development funds will be eligible for use in a participating jurisdiction, in accordance with §2306.111(c) of the Texas Government Code, which states that the Department shall expend at least 95 percent of its HOME funds for the benefit of non-participating small cities and rural areas that do not qualify to receive funds under the Cranston-Gonzalez National Affordable Housing Act directly from the United States Department of Housing and Urban Development. All funds not set aside under this subsection shall be used for the benefit of persons with disabilities who live in areas other than small cities and rural areas. The Department will accept applications from 9 a.m. to 5 p.m. each business day, excluding federal and state holidays, on an ongoing basis until such time as all funding has been committed, or until the current state fiscal year ends on August 31, 2005.

Eligible Activities

Eligible activities will include all those permissible under the federal HOME Rule at 24 CFR §92.205, the state HOME Rules at 10 TAC §§53.54 & 53.55, which involve the acquisition, rehabilitation and construction of affordable housing. Refinancing of federally financed properties is not an eligible activity. Tenant based rental assistance, owner occupied rehabilitation, and other activities not specifically related to the creation, building or development of affordable housing will not be considered under this NOFA. The NOFA is available to fund developments for homeownership and rental developments. Two separate applications will be available to eligible applicants: one for homeownership development activities and one for rental development activities. Interested applicants should contact the appropriate contact persons listed below for additional information regarding the application manuals and processes.

For homeownership development activities contact:

Paige McGilloway, (512) 475-4604 email: pmcgillo@tdhca.state.tx.us

For rental development activities contact:

David Danenfelzer, (512) 475-3865 email: ddanenfe@tdhca.state.tx.us

Applicants should be aware that there are minimum affordability standards necessary for HOME assisted rental developments. At a minimum, at least 20% of HOME assisted units should be affordable to persons earning 50% of the AMFI; at least 90% of the HOME assisted units should be affordable to persons earning 60% of the AMFI. These minimum requirements affect only those units which are HOME assisted and in no way supercede the minimum affordability requirements for applicants jointly applying for HOME and Housing Tax Credits under §42(i)(E) of the Internal Revenue Code.

Eligible Applicants

The Department provides HOME CHDO funding from the federal government to qualified nonprofit organizations eligible for CHDO certification. All applicants will be required to submit an application for CHDO certification with each development application. Previous CHDO status or certification will not be acceptable. The CHDO application package will be available with all other application materials on the Department's web site. CHDO Applicants must be the sponsor, owner or developer of the proposed development. Applicants who are jointly applying for Housing Tax Credits will be required to provide evidence that the CHDO Applicant is the managing general partner of the Limit Partnership. Applicants may be ineligible for funding if they meet any of the criteria listed in §53.52(b) of the Department's HOME rule. Applicants are encouraged to familiarize themselves with the Department's certification and debarment policies prior to application.

Allocation of Funds

The Department awards HOME funds, typically as a loan, to eligible recipients for the provision of housing for low, very low and extremely low-income individuals and families. Award amounts are limited to no more than \$1.5 million per development. The per unit subsidy may not exceed the per-unit dollar limits established by the U.S. Department of Housing and Urban Development (HUD) under §221(d)(3) of the National Housing Act which are applicable to the area in which the development is located, and as published by HUD. The minimum loan amount is \$1,000 per unit. Rental developments involving rehabilitation must establish that the rehabilitation will substantially improve the condition of the housing and will involve at least \$6,000 per Unit in direct hard costs. Funds will be awarded in accordance with the rules and procedures as set forth in the State of Texas HOME Program rules at 10 TAC §§53.50-53.63. The Department may, at its discretion and based upon review of the financial feasibility of the development, determine to award HOME funds as either a loan or as a grant. Loans can not exceed amortization of more than 40 years.

Each CHDO that is awarded funds for their development application may also be eligible to receive a grant of CHDO operating funds. Applicants will be required to submit organizational operating budgets, audits and other materials detailed in the HOME application. The amount of CHDO operating funds granted will be based on the Applicant's need. Awards may be for an amount up to 50% of the CHDO's total operating expenses per fiscal year, or \$50,000 per fiscal year, whichever is greater.

Each development will have a two-tier affordability term. The first tier will entail the federally required affordability term. For new construction or acquisition of new housing, this term is 20 years. For rehabilitation or acquisition of existing housing, the term is 5 years if the HOME investment is less than \$15,000 per unit; 10 years if the HOME investment is \$15,000 to \$40,000 per unit; and 15 years if the HOME investment is greater than \$40,000 per unit. This first tier is subject to all federal laws and regulations regarding HOME requirements, recapture, net proceeds and affordability. The second tier of affordability is the additional number of years required to bring the total term of affordability up to 30 years (for example, the second tier of affordability on a 10 year federal affordability term, is 20 additional years). The second tier, or remaining term, is subject only to state regulations and affordability requirements. Properties will be restricted under a land use restriction agreement ("LURA"), or other such instrument as determined by the Department for these terms. Among other restrictions, the LURA may require the owner of the property to continue to accept subsidies which may be offered by the federal government, prohibit the owner from exercising an option to prepay a federally insured loan, impose tenant income-based occupancy and rental restrictions, or impose any of these and other restrictions as deemed necessary at the sole

discretion of the Department in order to preserve the property as affordable housing on a case-by-case basis.

Match Requirements

Applicants will be required to submit documentation on all financial resources to be used in the development that may be considered match to the Department's federal HOME requirements. Applicants must provide firm commitments as defined in accordance with the Federal HOME rules at 24 CFR §92.218 and will be provided with the appropriate forms and instructions on how to report eligible match.

Development Requirements

Housing units subsidized by HOME funds must be affordable to low, very-low or extremely low income persons. Mixed Income rental developments may only receive funds for units that meet the HOME program affordability standards. All applications intended to serve persons with disabilities must adhere to the Department's Integrated Housing Rule at 10 TAC §1.15. Applicants serving local Participating Jurisdictions may only receive funding for those units which are specifically set-aside for persons with disabilities, in accordance with §2306.111(c) of the Texas Government Code.

All applications will be required to meet Section 8 Housing Quality Standards detailed under 24 CFR §92.401, Texas Minimum Construction Standards, as well as the accessibility requirements to meet Fair Housing Accessibility Standards and Section 504 of the Rehabilitation Act of 1973. Developments must also meet all local building codes or standards that may apply. If the development is located within a jurisdiction that does not have building codes, developments must meet the most current International Building Code. Applicants for rental development programs must also meet the applicable development standards of the Housing Tax Credit program rules at 10 T.A.C. §49.6, as further detailed in the application manual.

Resolution Requirements

The Department requires that all applications submitted must include a resolution from the applicant's direct governing body (Board of Directors) authorizing the submission of the application.

Audit Requirements

An applicant is not eligible to apply for funds or any other assistance from the Department unless audits are current or the Audit Certification Form has been submitted to the Department in a satisfactory format on or before the application submission date per 10 TAC §1.3(b). This is a threshold requirement outlined in the application, therefore, applications that have past due audits will be disqualified. Staff will not recommend applications for funding to the Department's Governing Board unless all unresolved audit findings, questioned or disallowed costs are resolved per 10 TAC §1.3(c).

CHDO Certification

Certification will be awarded in accordance with the rules and procedures as set forth in the HOME Investment Partnerships Program rules at 10 TAC §53.63, Community Housing Development Organization (CHDO) Certification. If all requirements under this Section are met, the Applicant is certified as a CHDO upon the award of the HOME funds by the Department. A new application for CHDO certification must be submitted to the Department with each new application for HOME funds under the CHDO set aside. For additional information about CHDO certification please contact Jorge Reyes at (512) 475-4577.

Review Process

Applications will be accepted from 9 a.m. to 5 p.m. each business day, excluding federal and state holidays, on an ongoing basis until such

time as all funding has been committed, or until the current state fiscal year ends on August 31, 2005. Applications will be accepted, reviewed and recommended to the Department's Board in accordance with Department's process for handling Open Cycle Applications detailed at §53.58(b) of the HOME Rule.

All applications must be submitted, and provide all documentation, as described in this NOFA, 10 TAC §53.58 of the HOME Rule and as further detailed in the appropriate HOME Application Manual. Applicants should refer to the appropriate application manual, for the appropriate threshold criteria.

The HOME Rental Application Manual, all required application documents (including CHDO application), a HOME Reference Manual, and all applicable HOME rules, will be available on the Department's web site at www.tdhca.state.tx.us/home.htm. The HOME Homeownership application & manual is anticipated to be available in Spring 2005. Applications will be required to adhere to the HOME Rule and threshold requirements in effect at the time of the application submission. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

Because applications are processed in the order they are received by the Department, it is possible that the Department will expend all available HOME funds before an application has completed all phases of its review. In the case that all HOME funds are committed before an application has completed all phases of the review process, the Department will notify the applicant that their application will remain active for 90 days in its current phase. If new HOME funds become available, applications will continue onward with their review without losing their received date priority. If HOME funds do not become available within 90 days of the notification, the Applicant will be notified that their application is no longer under consideration. The applicant must reapply to be considered for future funding. If on the date an application is received by the Department, no funds are available under this NOFA, the applicant will be notified that no funds exist under the NOFA and the application will not be processed.

The Department may decline to consider any application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any applications which are received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department strives, through its loan terms, to securitize its funding while ensuring the financial feasibility of a development. The Department reserves the right to negotiate individual elements of any application.

An Applicant may appeal decisions made by the Department in accordance with 10 TAC §§1.7-1.8.

Parties interested in submitting an application are encouraged to arrange a pre-application meeting with the Department staff before submitting an application. To arrange a meeting on rental development applications, Applicants should contact David Danenfelzer, Multifamily Housing Administrator at (512) 475-3865. To arrange a meeting on homeownership development applications, Applicants should contact Paige McGilloway, Single Family Project Manager at (512) 475-4604.

Application Submission

Application materials must be organized and submitted in the manner detailed in the appropriate application submission manual for rental and homeownership developments. Applicants must submit two complete copies of all application materials.

Applicants are required to remit a non-refundable application fee payable to the Texas Department of Housing and Community Affairs

in the amount of \$500.00 per application. Please send check, cashier's check or money order; do not send cash. §2306.147(b) of the Texas Government Code requires the Department to waive application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the application fee. The application fee is not an allowable or reimbursable cost under the HOME Program.

Applications may be sent to:

Multifamily Finance Production Division

Texas Department of Housing and Community Affairs

507 Sabine, Suite 700

Austin, TX 78701

or via the U.S. Postal Service to:

Multifamily Finance Production Division

Texas Department of Housing and Community Affairs

Post Office Box 13941

Austin, TX 78711-3941

NOTE: This NOFA does not include the text of the various applicable regulatory provisions that may be important to the particular HOME CHDO Program. For proper completion of the application, the Department strongly encourages potential applicants to review the State and Federal regulations and to participate in a pre-application conference when possible.

TRD-200500087

Edwina Carrington

Executive Director

Texas Department of Housing and Community Affairs

Filed: January 10, 2005



**Notice of Funding Availability (NOFA) Rental Housing
Development Open Funding Cycle**

HOME Investment Partnerships Program

The Texas Department of Housing and Community Affairs ("the Department") announces the availability of approximately \$5,000,000 in federal funding from the HOME Investment Partnerships Program (HOME) to develop affordable rental housing for low-income Texans. The availability and use of these funds is subject to the State HOME Rules at 10 TAC Chapter 53 ("HOME Rules"), the federal regulations governing the HOME program (24 CFR Part 92), and any other federal or state regulation that may apply to the development and operation of affordable housing units.

Allocation of Funds

The Department has set-aside approximately \$5,000,000 in HOME Investment Partnership Program Funds from its 2005 federal allocation for rental development activities. All funds released under this NOFA are to be used for the creation of affordable rental housing for low-income Texans earning 80 percent or less than the Area Median Family Income (AMFI) for the locality where the proposed development is located. At least \$2,000,000 of these funds are specifically set-aside for rental development proposals which involve the acquisition and rehabilitation of existing affordable housing that is at-risk of losing the

benefit of a subsidy in the form of a below-market interest rate loan, interest rate reduction, rental subsidy, Section 8 housing assistance payment, rental supplement payment, rental assistance payment, or equity incentive. The remaining \$3,000,000 in funds will be available to all eligible applicants for rental development activities. The Department will accept applications from 9 a.m. to 5 p.m. each business day, excluding federal and state holidays, on an ongoing basis until all funding has been committed, or until the current state fiscal year ends on August 31, 2005.

Applicants for the preservation set-aside must provide evidence that any stipulation to maintain affordability in the contract granting the subsidy is at-risk of expiring, or that the federally insured mortgage on the Development is eligible for prepayment, within 24 months from the date of application submission. An Application for a Development that includes the demolition of the existing units which have received any of the previously listed benefits will not qualify as an At-Risk Development unless the redevelopment will include the same site and is supplemented with HOPE VI funding or funding from the Local Housing Authority's capital grant fund.

The Department awards HOME funds, typically as a loan, to eligible recipients for the provision of housing for low, very low and extremely low-income individuals and families. Award amounts are limited to no more than \$1.5 million per development. The per unit subsidy may not exceed the per unit dollar limits established by the U.S. Department of Housing and Urban Development (HUD) under §221(d)(3) of the National Affordable Housing Act which are applicable to the area in which the development is located, and as published by HUD. The minimum loan amount is \$1,000 per unit. Rental developments involving rehabilitation must establish that the rehabilitation will substantially improve the condition of the housing and will involve at least \$6,000 per unit in direct hard costs. Funds will be awarded in accordance with the rules and procedures as set forth in the State of Texas HOME Program rules at 10 TAC §§53.50 - 53.63. The Department may, at its discretion and based upon review of the financial feasibility of the development, determine to award HOME funds as either a loan or as a grant. Loans can not exceed amortization of more than 40 years.

Each development will have a two-tier affordability term. The first tier will entail the federally required affordability term. For new construction or acquisition of new housing, this term is 20 years. For rehabilitation or acquisition of existing housing, the term is 5 years if the HOME investment is less than \$15,000 per unit; 10 years if the HOME investment is \$15,000 to \$40,000 per unit; and 15 years if the HOME investment is greater than \$40,000 per unit. This first tier is subject to all federal laws and regulations regarding HOME requirements, recapture, net proceeds and affordability. The second tier of affordability is the additional number of years required to bring the total term of affordability up to 30 years (for example, the second tier of affordability on a 10 year federal affordability term, is 20 additional years). The second tier, or remaining term, is subject only to state regulations and affordability requirements. Properties will be restricted under a land use restriction agreement ("LURA"), or other such instrument as determined by the Department for these terms. Among other restrictions, the LURA may require the owner of the property to continue to accept subsidies which may be offered by the federal government, prohibit the owner from exercising an option to prepay a federally insured loan, impose tenant income-based occupancy and rental restrictions, or impose any of these and other restrictions as deemed necessary at the sole discretion of the Department in order to preserve the property as affordable housing on a case-by-case basis.

Eligible Activities

Eligible activities will include those permissible under the Federal HOME Rule at 24 CFR §92.205, the state HOME Rules at 10 TAC

§53.54 and §53.55, and are limited by this NOFA to activities which involve the acquisition, rehabilitation and construction of affordable rental housing. Refinancing of federally financed properties is not an eligible activity. Rental development funds will be eligible for use in a participating jurisdiction, in accordance with §2306.111(c) of the Texas Government Code, which states that the Department shall expend at least 95 percent of its HOME funds for the benefit of non-participating small cities and rural areas that do not qualify to receive funds under the Cranston-Gonzalez National Affordable Housing Act directly from the United States Department of Housing and Urban Development. All funds not set aside under this subsection shall be used for the benefit of persons with disabilities who live in areas other than small cities and rural areas.

Applicants should be aware that there are minimum affordability standards necessary for HOME assisted developments. At a minimum, at least 20% of HOME assisted units should be affordable to persons earning 50% of the AMFI, and at least 90% of the HOME assisted units should be affordable to persons earning 60% of the AMFI. These minimum requirements affect only those units which are HOME assisted and do not supercede the minimum affordability requirements for applicants jointly applying for HOME and Housing Tax Credits under §42(i)(E) of the Internal Revenue Code.

Eligible Applicants

The Department provides HOME funding from the federal government to qualified nonprofit organizations, for-profit entities, sole proprietors, public housing authorities and units of local government. Applicants may be ineligible for funding if they meet any of the criteria listed in §53.52(b) of the Department's HOME rule. Applicants are encouraged to familiarize themselves with the Department's certification and debarment policies prior to application.

Match Requirements

Applicants will be required to submit documentation on all financial resources to be used in the development that may be considered match to the Department's federal HOME requirements. Applicants must provide firm commitments as defined in accordance with the Federal HOME rules at 24 CFR §92.218 and will be provided with the appropriate forms and instructions on how to report eligible match.

Development Requirements

Housing units subsidized by HOME funds must be affordable to low, very-low or extremely low income persons. Mixed Income rental developments may only receive funds for units that meet the HOME program affordability standards. All applications intended to serve persons with disabilities must adhere to the Department's Integrated Housing Rule at 10 TAC §1.15. Applicants serving local Participating Jurisdictions may only receive funding for those units which are specifically set-aside for persons with disabilities, in accordance with §2306.111(c) of the Texas Government Code.

All applications will be required to meet Section 8 Housing Quality Standards detailed under 24 CFR §92.401, Texas Minimum Construction Standards, as well as the accessibility requirements to meet Fair Housing Accessibility Standards and Section 504 of the Rehabilitation Act of 1973. Developments must also meet all local building codes or standards that may apply. If the development is located within a jurisdiction that does not have building codes, developments must meet the most current International Building Code. Applicants for rental development programs must also meet the applicable development standards of the Housing Tax Credit program rules at §49.6, as further detailed in the application manual.

Resolution Requirements

The Department requires that all applications submitted must include a resolution from the applicant's direct governing body (Board of Directors or Sole Proprietor) authorizing the submission of the application.

Audit Requirements

An applicant is not eligible to apply for funds or any other assistance from the Department unless audits are current or the Audit Certification Form has been submitted to the Department in a satisfactory format on or before the application submission date per 10 TAC §1.3(b). This is a threshold requirement outlined in the application, therefore, applications that have past due audits will be disqualified. Staff will not recommend applications for funding to the Department's Governing Board unless all unresolved audit findings, questioned or disallowed costs are resolved per 10 TAC §1.3(c).

Review Process

The Department will be accepting applications on an ongoing basis. Applications will be accepted from 9 a.m. to 5 p.m. each business day, excluding federal and state holidays, on an ongoing basis until such time as all funding has been committed, or until the current state fiscal year ends on August 31, 2005. Applications will be accepted, reviewed and recommended to the Department's Board in accordance with Department's process for handling Open Cycle Applications detailed at §53.58(b) of the HOME Rule.

All applications must be submitted, and provide all documentation, as described in this NOFA, 10 TAC §53.58 of the HOME Rule and as further detailed in the appropriate HOME Rental Application Manual. Applicants should refer to the application manual, for the appropriate threshold criteria.

The HOME Rental Application Manual, all required application documents, a HOME Reference Manual, and all applicable HOME rules, will be available on the Department's website at www.td-hca.state.tx.us/home.htm. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

Because applications are processed in the order they are received by the Department, it is possible that the Department will expend all available HOME funds before an application has completed all phases of its review. In the case that all HOME funds are committed before an application has completed all phases of the review process, the Department will notify the applicant that their application will remain active for 90 days in its current phase. If new HOME funds become available, applications will continue onward with their review without losing their received date priority. If HOME funds do not become available within 90 days of the notification, the Applicant will be notified that their application is no longer under consideration. The applicant must reapply to be considered for future funding. If on the date an application is received by the Department, no funds are available under this NOFA, the applicant will be notified that no funds exist under the NOFA and the application will not be processed.

The Department may decline to consider any application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any applications which are received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department strives, through its loan terms, to securitize its funding while ensuring the financial feasibility of a development. The Department reserves the right to negotiate individual elements of any application.

An Applicant may appeal decisions made by the Department in accordance with 10 TAC §1.7 and §1.8.

Parties interested in submitting an application are encouraged to arrange a pre-application meeting with the Department staff before submitting an application. To arrange a meeting on rental development applications, Applicants should contact David Danenfelzer, Multifamily Housing Administrator at (512) 475-3865.

Application Submission

Application materials must be organized and submitted in the manner detailed in the application submission manual for rental developments. Applicants must submit two complete copies of all application materials.

Applicants are required to remit a non-refundable application fee payable to the Texas Department of Housing and Community Affairs in the amount of \$500.00 per application. Please send check, cashier's check or money order; do not send cash. §2306.147(b) of the Texas Government Code requires the Department to waive application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the application fee. The application fee is not an allowable or reimbursable cost under the HOME Program.

Applications may be sent to:

Multifamily Finance Production Division

Texas Department of Housing and Community Affairs

507 Sabine, Suite 700

Austin, TX 78701

or via the U.S. Postal Service to:

Multifamily Finance Production Division

Texas Department of Housing and Community Affairs

Post Office Box 13941

Austin, TX 78711-3941

NOTE: This NOFA does not include the text of the various applicable regulatory provisions that may be important to the particular HOME CHDO Program. For proper completion of the application, the Department strongly encourages potential applicants to review the State and Federal regulations and to participate in a pre-application conference when possible.

TRD-200500085

Edwina Carrington

Executive Director

Texas Department of Housing and Community Affairs

Filed: January 10, 2005

Houston-Galveston Area Council

Request for Proposal

The Houston-Galveston Area Council (H-GAC) is seeking the services of a qualified consultant to evaluate control measures that reduce on-road mobile emissions of nitrogen oxides (NOx) and volatile organic compounds (VOCs) and quantify potential emission benefits and associated costs of potential mobile source control measures contained in the revisions of the Texas State Implementation Plan for the Houston-Galveston nonattainment area. The consultant will be responsible for all aspects of the project, including working on the Voluntary Mobile Emission Program, the web-based calculators

and Transportation Control Measures, assisting in the identification and recruitment of prospective fleet operations and develop the necessary documentation methodology, and performing congestion and emissions analyses of Transportation Control Measures that may be applied to the Houston-Galveston Area.

Proposal submissions are due by **Monday, February 7, 2005, 5 p.m. CST**. Late submittals will **NOT** be accepted. Twelve (12) typewritten, bound/stapled and signed copies are required.

The Request for Proposals packet can be downloaded from the H-GAC Transportation Department Web site at **www.h-gac.com/transportation**. Interested firms may also obtain the packet at the H-GAC offices at 3555 Timmons Lane, Suite 120, Houston, Texas 77027, or by contacting Shelley A. Whitworth at 713-627-3200. All questions regarding the Request for Proposals must be made in writing, and can be sent to the attention of Shelley A. Whitworth by email to shelley.whitworth@h-gac.com, faxed to 713-993-4508, or mailed to the Houston-Galveston Area Council, P.O. Box 22777, Houston, TX 77227-2777.

TRD-200500125

Alan Clark

MPO Director

Houston-Galveston Area Council

Filed: January 12, 2005

Texas Department of Insurance

Company Licensing

Application to change the name of RANGER LLOYDS to FAIRMONT SPECIALTY LLOYDS, a domestic Lloyds/Reciprocal. The home office is in Houston, Texas.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701, within 20 days after this notice is published in the *Texas Register*.

TRD-200500132

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: January 12, 2005

Notice of Application by a Small Employer Carrier to be a Risk-Assuming Carrier

Notice is given to the public of the application of the listed small employer carrier to be a risk-assuming carrier under Texas Insurance Code Article 26.52. A small employer carrier is defined by Chapter 26 of the Texas Insurance Code as a health insurance carrier that offers, delivers or issues for delivery, or renews small employer health benefit plans subject to the chapter. A risk-assuming carrier is defined by Chapter 26 of the Texas Insurance Code as a small employer carrier that elects not to participate in the Texas Health Reinsurance System. The following small employer carrier has applied to be a risk-assuming carrier:

Valley Group Hospital Service Corporation

The application is subject to public inspection at the offices of the Texas Department of Insurance, Legal & Compliance Division - Archie Clayton, 333 Guadalupe, Tower I, Room 860, Austin, Texas.

If you wish to comment on the application of Valley Group Hospital Service Corporation to be a risk-assuming carrier, you must submit your written comments within 60 days after publication of this notice

in the *Texas Register* to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-91204. Upon consideration of the application and comments, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to approve the applicant to be a risk-assuming carrier.

TRD-200500109

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: January 10, 2005



Texas Lottery Commission

Instant Game Number 534 "Monthly Bonus"

1.0 Name and Style of Game.

A. The name of Instant Game No. 534 is "MONTHLY BONUS". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 534 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 534.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, DOLLAR BILL SYMBOL, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$200, \$2,000, \$10,000 and \$20,000.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 534 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
DOLLAR BILL SYMBOL	WIN
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY

\$50.00	FIFTY
\$200	TWO HUND
\$2,000	TWO THOU
\$10,000	MO/20YEARS
\$20,000	20 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 534 - 1.2E

CODE	PRIZE
FIV	\$5.00
TEN	\$10.00
TWL	\$12.00
TWN	\$20.00
TFR	\$24.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$5.00, \$10.00, \$12.00, \$20.00 or \$24.00.

H. Mid-Tier Prize - A prize of \$50.00, \$60.00 or \$200.

I. High-Tier Prize - A prize of \$2,000, \$20,000 or \$10,000/MO (\$10,000 per month for 20 years).

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (534), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 534-0000001-001.

L. Pack - A pack of "MONTHLY BONUS" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of ticket 075 while the other fold will show the back of ticket 001 and front of 075.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government

Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "MONTHLY BONUS" Instant Game No. 534 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "MONTHLY BONUS" Instant Game is determined once the latex on the ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the LUCKY NUMBERS play symbols the player wins prize shown for that number. If a player reveals a dollar bill play symbol the player wins \$10,000 per month for 20 years. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

- Exactly 45 (forty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;
- Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
- Each of the Play Symbols must be present in its entirety and be fully legible;
- Each of the Play Symbols must be printed in black ink except for dual image games;
- The ticket shall be intact;
- The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.
17. Each of the 45 (forty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

- A. Consecutive non-winning tickets will not have identical play data, spot for spot.
- B. No more than one winner of \$60 and higher per pack.
- C. 5. No duplicate non-winning Your Numbers on a ticket.
- D. No duplicate Lucky Numbers on a ticket.

E. No more than four like non-winning prize symbols on a ticket.

F. A non-winning prize symbol will never be the same as a winning prize symbol.

G. 10. No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and \$5).

H. The "dollar bill" and \$10,000 prize symbol will only appear on intended winning tickets as dictated by the prize structure and will only appear with each other.

2.3 Procedure for Claiming Prizes.

A. To claim a "MONTHLY BONUS" Instant Game prize of \$5.00, \$10.00, \$12.00, \$20.00, \$24.00, \$50.00, \$60.00 or \$200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$60.00 or \$200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MONTHLY BONUS" Instant Game prize of \$2,000, \$20,000 or \$10,000/MO (\$10,000 per month for 20 years), the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MONTHLY BONUS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. When claiming a "MONTHLY BONUS" Instant Game prize of \$10,000 per month for 20 years, the claimant must choose one of two (2) payment options for receiving his prize:

1. Monthly via direct deposit to the winner's account. With this plan, upon validation of the prize, a payment of \$10,000 less any taxes and/or other offsets or mandatory withholdings required by law, will be made each month on the first business day of the month for a combined total of \$120,000 per year. Monthly payments will be made for a period of 20 years or a total of 240 monthly payments to reach the total maximum payment of \$2,400, 000.

2. Annually via direct deposit to the winner's account. With this plan, upon validation of the prize, a payment of \$120,000 less any taxes and/or other offsets or mandatory withholdings required by law, will be made once a year on the first business day of the anniversary month

of the claim. Annual payments will be made for a period of 20 years or a total of 20 annual to reach the total maximum payment of \$2,400,000.

5. If a payment falls on a holiday or weekend, the payment will be made on the following business day.

E. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General; or
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "MONTHLY BONUS" Instant Game, the Texas Lottery shall deliver

to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "MONTHLY BONUS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 tickets in the Instant Game No. 534. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 534 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	1,393,600	5.77
\$10	428,800	18.75
\$12	107,200	75.00
\$20	107,200	75.00
\$24	53,600	150.00
\$50	107,200	75.00
\$60	26,800	300.00
\$200	4,154	1,935.48
\$2,000	80	100,500.00
\$20,000	5	1,608,000.00
\$10,000/MO	2	4,020,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.61. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 534 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 534, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200500106

Kimberly Kiplin

General Counsel

Texas Lottery Commission

Filed: January 10, 2005



Instant Game Number 535 "Bob Wills Commemorative Game"

1.0 Name and Style of Game.

A. The name of Instant Game No. 535 is "BOB WILLS COMMEMORATIVE". The play style is "key symbol match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 535 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 535.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: BOOT SYMBOL, SADDLE SYMBOL, HAT SYMBOL, SPUR SYMBOL, HORSE SYMBOL, STAR SYMBOL, HORSESHOE SYMBOL, LASSO SYMBOL, ROSE SYMBOL, MUSIC NOTES SYMBOL, DRUM SYMBOL, GUITAR SYMBOL, TRUMPET SYMBOL, BW SYMBOL, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$100 or \$1,100.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 535 - 1.2D

PLAY SYMBOL	CAPTION
BOOT SYMBOL	BOOT
SADDLE SYMBOL	SADDLE
HAT SYMBOL	HAT
SPUR SYMBOL	SPUR
HORSE SYMBOL	HORSE
STAR SYMBOL	STAR
HORSESHOE SYMBOL	HSHOE
LASSO SYMBOL	LASSO
ROSE SYMBOL	ROSE
MUSIC NOTES SYMBOL	MUSIC
DRUM SYMBOL	DRUM
GUITAR SYMBOL	GUITAR
TRUMPET SYMBOL	TRUMPET
BW SYMBOL	AUTO
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$100	ONE HUND
\$1,100	11 HUND

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 535 - 1.2E

CODE	PRIZE
ONE	\$1.00
TWO	\$2.00
FOR	\$4.00
FIV	\$5.00
TEN	\$10.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the

bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$100.00

I. High Tier Prize - A prize of \$1,100.00

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine

(9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (535), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 535-0000001-001.

L. Pack - A pack of "BOB WILLS COMMEMORATIVE" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 and 005 will be on the top page; tickets 006 and 010 on the next page; etc.; and tickets 246 and 250 will be on the last page. A ticket will be folded over on both the front and back of the book so both ticket art and ticket backs are displayed in the shrink-wrap.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BOB WILLS COMMEMORATIVE" Instant Game No. 535 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "BOB WILLS COMMEMORATIVE" Instant Game is determined once the latex on the ticket is scratched off to expose 9 (nine) Play Symbols. If a player matches any of YOUR SYMBOLS play symbols in the play area to the SWING SYMBOL play symbol the player wins the prize shown for that symbol. If a player reveals a "BW" play symbol the player wins \$100 instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 9 (nine) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 9 (nine) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 9 (nine) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 9 (nine) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. Each prize symbol will be approximately evenly distributed among its possible locations.

C. No duplicate non-winning play symbols on a ticket.

D. No duplicate non-winning prize symbols on a ticket.

E. The "BW" auto win play symbol will only appear on intended winning tickets and will always appear with the \$100 prize symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "BOB WILLS COMMEMORATIVE" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00 or \$100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The

Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BOB WILLS COMMEMORATIVE" Instant Game prize of \$1,100, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BOB WILLS COMMEMORATIVE" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General; or
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "BOB WILLS COMMEMORATIVE" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "BOB WILLS COMMEMORATIVE" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,160,000 tickets in the Instant Game No. 535. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 535 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	913,920	8.93
\$2	408,000	20.00
\$4	204,000	40.00
\$5	65,280	125.00
\$10	48,960	166.67
\$20	32,640	250.00
\$100	8,058	1,012.66
\$1,100	68	120,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.85. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 535 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 535, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200500107

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: January 10, 2005



Instant Game Number 572 "Big Money Bonus Spectacular"

1.0 Name and Style of Game.

A. The name of Instant Game No. 572 is "BIG MONEY BONUS SPECTACULAR". The play style for Game 1 is "yours beats theirs"; the play style for Game 2 is "match up with auto win"; the play style for Game 3 is "key number match with multiplier".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 572 shall be \$20.00 per ticket.

1.2 Definitions in Instant Game No. 572.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, DIAMOND SYMBOL, MONEY BAG SYMBOL, STACK OF COINS SYMBOL, STACK OF BILL SYMBOL, DOLLAR SIGN SYMBOL, STAR SYMBOL, GOLD BAR SYMBOL, 10X SYMBOL, \$2.00, \$3.00, \$5.00, \$8.00, \$10.00, \$20.00, \$40.00, \$50.00, \$80.00, \$100, \$200, \$400, \$1,000 \$10,000 or \$ONE MILL SYMBOL.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 572 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
10X SYMBOL	WINX10
DIAMOND SYMBOL	DIAMD
MONEY BAG SYMBOL	MBAG
STACK OF COINS SYMBOL	COINS
STACK OF BILLS SYMBOL	BILLS
DOLLAR SIGN SYMBOL	MONEY
STAR SYMBOL	STAR

GOLD BAR SYMBOL	WIN\$50
\$2.00	TWO\$
\$3.00	THREE\$
\$5.00	FIVE\$
\$8.00	EIGHT\$
\$10.00	TEN\$
\$20.00	TWENTY
\$40.00	FORTY
\$50.00	FIFTY
\$80.00	EIGHTY
\$100	ONE HUND
\$200	TWO HUND
\$400	FOR HUND
\$1,000	ONE THOU
\$10,000	10 THOU
\$ONE MILL	ONE MIL

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 572 - 1.2E

CODE	PRIZE
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$20.00.

H. Mid-Tier Prize - A prize of \$30.00, \$40.00, \$50.00, \$80.00, \$100, \$200 or \$400.

I. High-Tier Prize - A prize of \$1,000 or \$10,000 or \$1,000,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (572), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 050 within each pack. The format will be: 572-0000001-001.

L. Pack - A pack of "BIG MONEY BONUS SPECTACULAR" Instant Game tickets contains 50 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 050 will be exposed on one side of the pack and ticket front 001 on the other side.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BIG MONEY BONUS SPECTACULAR" Instant Game No. 572 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "BIG MONEY BONUS SPECTACULAR" Instant Game is determined once the latex on the ticket is scratched off to expose 47 (forty-seven) Play Symbols. In the Game 1: if a player's YOUR NUMBER play symbol beats THEIR NUMBER play symbol within a game the player wins prize indicated for that game. In the Game 2: if a player reveals a gold bar play symbol the player wins \$50 instantly. In the Game 3: if a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols the player wins prize indicated for that number. If a player reveals a 10X play symbol the player wins 10 (ten) times the prize indicated for that

number. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 47 (forty-seven) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 47 (forty-seven) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 47 (forty-seven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.
17. Each of the 47 (forty-seven) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. Game 1: No duplicate games in any order.

C. Game 1: No duplicate non-winning prize symbols.

D. Game 1: No ties between Your number and Their number.

E. Game 3: No duplicate non-winning Your Numbers.

F. Game 3: No duplicate Winning Numbers.

G. Game 3: No more than two like non-winning prize symbols in this game.

H. Game 3: A non-winning prize symbol will never be the same as a winning prize symbol in this game.

I. Game 3: No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and \$5).

J. Game 3: The 10X symbol will only appear on intended winning tickets and only as designated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "BIG MONEY BONUS SPECTACULAR" Instant Game prize of \$20.00, \$30.00, \$40.00, \$50.00, \$80.00, \$100, \$200 or \$400, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$30.00, \$40.00, \$50.00, \$80.00, \$100, \$200 or \$400 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BIG MONEY BONUS SPECTACULAR" Instant Game prize of \$1,000, \$10,000 or \$1,000,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is

not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BIG MONEY BONUS SPECTACULAR" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
 2. delinquent in making child support payments administered or collected by the Attorney General; or
 3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
 4. in default on a loan made under Chapter 52, Education Code; or
 5. in default on a loan guaranteed under Chapter 57, Education Code.
- E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "BIG

MONEY BONUS SPECTACULAR" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "BIG MONEY BONUS SPECTACULAR" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 3,000,000 tickets in the Instant Game No. 572. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 572 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$20	840,000	3.57
\$30	150,000	20.00
\$40	60,000	50.00
\$50	60,000	50.00
\$80	60,000	50.00
\$100	40,000	75.00
\$200	12,375	242.42
\$400	2,125	1,411.76
\$1,000	875	3,428.57
\$10,000	50	60,000.00
\$1,000,000	3	1,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 2.45. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 572 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 572, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200500108
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: January 10, 2005



Public Comment Hearing

The public hearing to receive public comment which will be held on Thursday, February 3, 2005, at 10:00 a.m. at the Texas Lottery Commission, Commission Auditorium, First Floor, 611 E. Sixth Street, Austin, Texas 78701, will include any public comment regarding the repeal of 16 TAC Chapter 402, relating to Bingo Regulation and Tax provisions and the proposed adoption of new 16 TAC Chapter 402, §§402.100 - 402.103, 402.200 - 402.203, 402.300 - 402.304, 402.400 - 402.407, 402.500 - 402.504, 402.600 - 402.603, and 402.700 - 402.705. The repeal is proposed simultaneously with the proposal of new provisions making nonsubstantive changes, including: (1) renaming Chapter 402 the "Charitable Bingo Administrative Rules;" (2) reorganizing Chapter 402 into subchapters; (3) updating legal citations; and (4)

deleting references to obsolete dates. Persons requiring any accommodation for a disability should notify Michelle Guerrero, Executive Assistant to the General Counsel, Texas Lottery Commission at (512) 344-5113 at least 72 hours prior to the public hearing.

TRD-200500116
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: January 11, 2005



Public Hearing

A public hearing to receive public comments regarding proposed new rules, 16 TAC Chapter 402, §§402.100 - 402.103, 402.200 - 402.203, 402.300 - 402.304, 402.400 - 402.407, 402.500 - 402.504, 402.600 - 402.603, and 402.700 - 402.705, relating to new Bingo Regulation and Tax provisions making nonsubstantive changes, including: (1) renaming Chapter 402 the "Charitable Bingo Administrative Rules;" (2) reorganizing Chapter 402 into subchapters; (3) updating legal citations; and (4) deleting references to obsolete dates will be held at 10:00 a.m. on Thursday, February 3, 2005 at the Texas Lottery Commission, Commission Auditorium, First Floor, 611 East Sixth Street, Austin, Texas 78701. Persons requiring any accommodation for a disability should notify Michelle Guerrero, Executive Assistant to the General Counsel, Texas Lottery Commission at (512) 344-5113 at least 72 hours prior to the public hearing.

TRD-200500084
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: January 7, 2005



Manufactured Housing Division

Notice of Administrative Hearing

Wednesday, January 26, 2005, 1:00 p.m.

State Office of Administrative Hearings, William P. Clements Building,
300 West 15th Street, 4th Floor,

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the complaint of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs vs. Beau Pendleton DBA ASAP Mobile Homes, to hear alleged violations of Sections 1201.451(a) and (b), 1201.455(a), 1201.107(b), and 1201.256(d) of the Act and Sections 80.50(e), 80.123(b), and 80.132(3) of the Rules by selling a manufactured home from an unbonded location, failing to deliver a good and marketable title to consumers after receiving written notice, and selling manufactured homes without providing consumers with proper notices, warranties and disclosures. SOAH 332-05-2986. Department MHD2004001433-LRV.

Contact: Jim R. Hicks, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589, james.hicks@tdhca.state.tx.us

TRD-200500088

Timothy K. Irvine

Executive Director

Manufactured Housing Division

Filed: January 10, 2005

Public Utility Commission of Texas

Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on January 7, 2005, with the Public Utility Commission of Texas, for an amendment to a certificated service area boundary.

Docket Style and Number: Application of Verizon Southwest for an Amendment to a Certificate of Convenience and Necessity Service Area Boundary - Highpointe Community. Docket Number 30636.

The Application: Verizon's request will realign the service area boundaries between the Cedar Valley Zone and the Dripping Springs Exchange to accommodate a new subdivision. Southwestern Bell Telephone, LP, doing business as SBC Texas, agrees to relinquish a small portion of its Cedar Valley Zone to Verizon to allow residents in a proposed subdivision to be serviced by one certificated telecommunications carrier.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by February 2, 2005, by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 30636.

TRD-200500113

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: January 11, 2005

Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of a joint application for sale, transfer, or merger filed with the Public Utility Commission of Texas on January 7, 2005, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §§14.101 and 37.154 (Vernon 1998 & Supp. 2005) (PURA).

Docket Style and Number: Joint Petition of Nueces Electric Cooperative, Incorporated and AEP Texas Central Company to Transfer Service Area Rights and Associated Distribution Facilities, Docket Number 30633.

The Application: Nueces Electric Cooperative, Incorporated (NEC) and AEP Texas Central Company (TCC) (collectively, Applicants) filed a joint application for approval of their proposal to transfer certain certificated service area rights and related distribution facilities. The Applicants have agreed to remedy the inefficiencies of the overlapping areas by seeking commission approval to transfer to each other the appropriate certificate rights and grandfathered service rights so as to create new service area boundaries that result in single certification and single presence of only one of the companies; thereby eliminating dually certificated areas, with the exception of the area within the Kingsville Naval Air Station, based on a request of the Station. Additionally, approximately 578 miles of distribution line and facilities would be exchanged between NEC and TCC so each company would generally possess all of the distribution facilities in its respective new singly certificated service area.

If this application is approved, approximately 5,169 retail customers currently served by TCC facilities would be transferred to NEC, and approximately 997 retail customers currently served by NEC facilities would be transferred to TCC.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 30633.

TRD-200500133

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: January 12, 2005

Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on January 4, 2005, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of NextG Networks of Illinois, Inc. d/b/a NextG Networks Central for a Service Provider Certificate of Operating Authority, Docket Number 30616 before the Public Utility Commission of Texas.

Applicant intends to provide RF Transport Services for business subscribers.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than January 26, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30616.

TRD-200500072
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 7, 2005



Notice of Application to Relinquish a Service Provider Certificate of Operating Authority

On January 5, 2005, Arizona Dialtone, Inc. filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60521. Applicant intends to relinquish its certificate.

The Application: Application of Arizona Dialtone, Inc. for Relinquishment of its Service Provider Certificate of Operating Authority, Docket Number 30623.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than January 26, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30623.

TRD-200500082
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 7, 2005



Public Notice of Workshop on Revisions to the ERCOT Fee Filing Package Form

The staff of the Public Utility Commission of Texas (commission) will hold a workshop regarding proposed revisions to the fee filing package (FFP) used in proceedings in which the Electric Reliability Council of Texas (ERCOT) requests changes to its fees pursuant to P.U.C. Procedural Rule §22.252. The workshop will be held on Friday, January 28, 2005 at 10:00 a.m. in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 30626, *Amendment of ERCOT Filing Package Required by P.U.C. Procedural Rule §22.252*, has been established for this proceeding. This project has been initiated to comply with the Settlement Agreement in Docket Number 30456, *Commission Staff's Petition to Reduce the ERCOT System Administration Fee*, in which Staff agreed to make necessary changes to the fee filing package used in applications by ERCOT to change its fees.

The current commission-approved fee filing package form is available on the commission's web site under Electric - Forms at <http://www.puc.state.tx.us/electric/forms/index.cfm>. Pursuant to the

agreement in Docket Number 30456, Staff intends to propose amendments to the fee filing package to require the following additional information:

A. A detailed analysis of ERCOT's workforce requirements performed by a third party consultant, including analysis of essential and non-essential functions, and which functions are appropriately performed by contract labor rather than ERCOT employees.

B. An assessment of ERCOT's compensation levels to determine reasonableness.

C. Detailed information about ERCOT employee activities based on the employee time-keeping data collection that will be implemented in January 2005.

D. Analysis of incremental savings attributable to replacing contract labor with employees.

E. Analysis of cost savings related to automation of manual processes.

F. Full details concerning spending on capital projects and operations. ERCOT will distinguish between short term (less than one year) and long term capital projects and between recurrent and one-time projects. In addition, ERCOT will provide a list of 2005 capital projects with individual cost benefit analyses and prioritization criteria. If any project(s) are abandoned and/or combined, a written justification will be provided.

G. Description of what process(es) the agency has undertaken to examine the current cost structure and organization.

Some of these requirements may apply only to ERCOT's October, 2005 filing, while others may become permanent requirements under the fee filing package.

The commission invites public comment on these proposed changes and any other additional changes that interested persons believe would assist the commission in its duty to establish reasonable and non-discriminatory fees to be charged by ERCOT. Persons who request that additional items be added to the fee filing package form are asked to supply appropriate language specifying the type and format of the information in sufficient detail that the language could be incorporated in the fee filing package. Following the workshop, Staff intends to prepare a revised form and will consider additional written comment on the draft form before presenting the form for approval by the commission.

Written comments concerning this project may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Written comments received by January 26, 2005, will be considered at the workshop. The deadline for filing written comments on the proposed draft form is February 23, 2005. All responses should reference Project Number 30626.

Questions concerning the workshop or this notice should be referred to Patrick J. Sullivan, Staff Attorney, Legal and Enforcement Division, (512) 936-7125. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200500114
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 11, 2005



Request for Comments Relating to Amendments to PUC Rules Concerning Utilities' Eligible Purchased Power Expenses

The Public Utility Commission of Texas (commission) has initiated Project Number 29630 to amend its rules concerning utilities' eligible purchased power expenses. The commission seeks comments from interested parties in response to the following questions.

1. Where a purchased-power contract does not specifically identify a purchase as the purchase of capacity, are there contract characteristics that should result in the commission concluding that the purchase represents a capacity purchase? Explain your reasoning. The following characteristics might be considered as sufficient for treating a purchase as a purchase of capacity, or others may be suggested. For any of these characteristics, describe the evidence that would be available to the commission in making this determination.

- a. Purchase is for the peak season or peak hours.
- b. Purchase is for reliability reasons or to meet generation reserve margin or operating reserve requirements.
- c. Cost of the power is higher than some market benchmark or utility cost standard.
- d. The purchase cannot be interrupted or is a take or pay contract.

2. If the commission concludes that a purchase of power includes a purchase of capacity, how should it determine the value of capacity and energy? Are any of the following methods reasonable to determine the amount of capacity costs in a purchased power transaction? Are there other methods that would be reasonable? Describe the evidence that would be available to the commission in making this determination.

- a. Classify any purchased power costs in excess of a utility cost standard as capacity costs. Such a standard might be:
 - i. the variable operating costs of the utility's highest-cost peaking unit;
 - ii. the average variable operating costs of all of the utility's generating units;
 - iii. the average of the actual capacity charges paid by the utility during a similar period in which capacity purchases were made.
- b. Capacity costs would be based on the annual fixed costs of a generic generation unit, using a prescribed methodology.

3. Are there other methods for achieving the objectives of the current rule, other than imputing a capacity cost to power purchases, that the commission should consider?

Responses on the above questions may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. All comments should refer to Project Number 29630. Comments must be received by 3:00 p.m. on February 18, 2005. Reply comments must be received by March 4, 2005.

TRD-200500098

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 10, 2005

◆ ◆ ◆ Sam Houston State University

Consultant Contract Award

Sam Houston State University (SHSU), in accordance with provisions of Government Code, Section 2254.030, announces the awarding of a consultant contract to a consulting firm based in Washington, D.C. The solicitation for proposals was published in the November 26, 2004, issue of the *Texas Register* (29 TexReg 11192).

The consultant will represent and assist the university in developing projects deemed important to the university, assist the university in obtaining funding for university projects, and provide consulting and representation as directed by Sam Houston State University.

One proposal was received in response to this solicitation for proposals. The proposal was from Mr. Bobby Mills/The Advocacy Group, 1350 I Street, NW, Suite #680, Washington, D.C. 20005.

The consultant awarded the contract was: Mr. Bobby Mills/The Advocacy Group, 1350 I Street NW, Suite #680, Washington, D.C. 20005.

The consultant contract begins January 1, 2005 and ends December 31, 2005 with the option to renew. The fee estimate is \$60,000 excluding expenses.

Reports and documents will be submitted as required.

TRD-200500071

Dr. James F. Gaertner
President
Sam Houston State University
Filed: January 7, 2005

◆ ◆ ◆ Texas Workers' Compensation Commission

Invitation to Apply to the Medical Advisory Committee (MAC)

The Texas Workers' Compensation Commission seeks to have a diverse representation on the MAC and invites qualified individuals from all regions of Texas to apply for openings on the MAC in accordance with the eligibility requirements of the *Procedures and Standards for the Medical Advisory Committee*. The Medical Review Division is currently accepting applications for the following Medical Advisory Committee representative vacancies:

Primary

- * Public Health Care Facility

Alternate

- * Public Health Care Facility
- * Dentist
- * Pharmacist
- * Podiatrist
- * Employer
- * Employee
- * General Public Representative 1
- * General Public Representative 2

Commissioners for the Texas Workers' Compensation Commission appoint the Medical Advisory Committee members who are composed of 18 primary and 18 alternate members representing health care providers, employees, employers, insurance carriers, and the general public. Primary members are required to attend all Medical Advisory Committee meetings, subcommittee meetings, and work group meetings to which they are appointed. The alternate member may attend all meetings, however during a primary member's absence, the alternate member must attend meetings to which the primary member is appointed. Requirements and responsibilities of members are established in the *Procedures and Standards for the Medical Advisory Committee* as adopted by the Commission.

The Medical Advisory Committee meetings must be held at least quarterly each fiscal year during regular Commission working hours. Members are not reimbursed for travel, per diem, or other expenses associated with Committee activities and meetings. Voluntary service on the Medical Advisory Committee is greatly appreciated by the TWCC Commissioners and the TWCC Staff.

The purpose and task of the Medical Advisory Committee, which includes advising the Commission's Medical Review Division on the development and administration of medical policies, rules and guidelines, are outlined in the Texas Workers' Compensation Act, §413.005.

Applications and other relevant Medical Advisory Committee information may be viewed and downloaded from the Commission's website at <http://www/twcc.state.tx.us>. Click on 'Commission Meetings', then 'Medical Advisory Committee'. Applications may also be obtained by calling Jane McChesney, MAC Coordinator, at 512-804-4855 or Ruth Richardson, Manager of Monitoring, Analysis and Education, Medical Review Division at 512-804-4850.

The qualifications as well as the terms of appointment for all positions are listed in the Procedures and Standards for the Medical Advisory Committee. These Procedures and Standards are as follows:

LEGAL AUTHORITY The Medical Advisory Committee for the Texas Workers' Compensation Commission, Medical Review Division is established under the Texas Workers' Compensation Act, (the Act) §413.005.

PURPOSE AND ROLE The purpose of the Medical Advisory Committee (MAC) is to bring together representatives of health care specialties and representatives of labor, business, insurance and the general public to advise the Medical Review Division in developing and administering the medical policies, fee guidelines, and the utilization guidelines established under §413.011 of the Act.

COMPOSITION Membership. The composition of the committee is governed by the Act, as it may be amended. Members of the committee are appointed by the Commissioners and must be knowledgeable and qualified regarding work-related injuries and diseases.

Members of the committee shall represent specific health care provider groups and other groups or interests as required by the Act, as it may be amended. As of September 1, 2001, these members include a public health care facility, a private health care facility, a doctor of medicine, a doctor of osteopathic medicine, a chiropractor, a dentist, a physical therapist, a podiatrist, an occupational therapist, a medical equipment supplier, a registered nurse, and an acupuncturist. Appointees must have at least six (6) years of professional experience in the medical profession they are representing and engage in an active practice in their field.

The Commissioners shall also appoint the other members of the committee as required by the Act, as it may be amended. An insurance carrier representative may be employed by: an insurance company; a certified self-insurer for workers' compensation insurance; or a governmental entity that self-insures, either individually or collectively. An insurance carrier member may be a medical director for the carrier but may not be a utilization review agent or a third party administrator for the carrier.

A health care provider member, or a business the member is associated with, may not derive more than 40% of its revenues from workers compensation patients. This fact must be certified in their application to the MAC.

The representative of employers, representative of employees, and representatives of the general public shall not hold a license in the health

care field and may not derive their income directly from the provision of health care services.

The Commissioners may appoint one alternate representative for each primary member appointed to the MAC, each of whom shall meet the qualifications of an appointed member.

Terms of Appointment: Members serve at the pleasure of the Commissioners, and individuals are required to submit the appropriate application form and documents for the position. The term of appointment for any primary or alternate member will be two years, except for unusual circumstances (such as a resignation, abandonment or removal from the position prior to the termination date) or unless otherwise directed by the Commissioners. A member may serve a maximum of two terms as a primary, alternate or a combination of primary and alternate member. Terms of appointment will terminate August 31 of the second year following appointment to the position, except for those positions that were initially created with a three-year term. For those members who are appointed to serve a part of a term that lasts six (6) months or less, this partial appointment will not count as a full term.

Abandonment will be deemed to occur if any primary member is absent from more than two (2) consecutive meetings without an excuse accepted by the Medical Review Division Director. Abandonment will be deemed to occur if any alternate member is absent from more than two (2) consecutive meetings which the alternate is required to attend because of the primary member's absence without an excuse accepted by the Medical Review Division Director.

The Commission will stagger the August 31st end dates of the terms of appointment between odd and even numbered years to provide sufficient continuity on the MAC.

In the case of a vacancy, the Commissioners will appoint an individual who meets the qualifications for the position to fill the vacancy. The Commissioners may re-appoint the same individual to fill either a primary or alternate position as long as the term limit is not exceeded. Due to the absence of other qualified, acceptable candidates, the Commissioners may grant an exception to its membership criteria, which are not required by statute.

RESPONSIBILITY OF MAC MEMBERS Primary Members. Make recommendations on medical issues as required by the Medical Review Division.

Attend the MAC meetings, subcommittee meetings, and work group meetings to which they are appointed.

Ensure attendance by the alternate member at meetings when the primary member cannot attend.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies.

Alternate Members. Attend the MAC meetings, subcommittee meetings, and work group meetings to which the primary member is appointed during the primary member's absence.

Maintain knowledge of MAC proceedings.

Make recommendations on medical issues as requested by the Medical Review Division when the primary member is absent at a MAC meeting.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies when the primary member is absent from a MAC meeting.

Committee Officers. The TWCC Commissioners designate the chairman of the MAC. The MAC will elect a vice chairman. A member shall be nominated and elected as vice chairman when he/she receives

a majority of the votes from the membership in attendance at a meeting at which nine (9) or more primary or alternate members are present.

Responsibilities of the Chairman: Preside at MAC meetings and ensure the orderly and efficient consideration of matters requested by the Medical Review Division; prior to meetings, confer with the Medical Review Division Director, and when appropriate, the TWCC Executive Director to receive information and coordinate:

- a. Preparation of a suitable agenda.
- b. Planning MAC activities.
- c. Establishing meeting dates and calling meetings.
- d. Establishing subcommittees.
- e. Recommending MAC members to serve on subcommittees.

If requested by the Commission, appear before the Commissioners to report on MAC meetings.

COMMITTEE SUPPORT STAFF The Director of Medical Review will provide coordination and reasonable support for all MAC activities. In addition, the Director will serve as a liaison between the MAC and the Medical Review Division staff of TWCC, and other Commission staff if necessary.

The Medical Review Director will coordinate and provide direction for the following activities of the MAC and its subcommittees and work groups:

Preparing agenda and support materials for each meeting.

Preparing and distributing information and materials for MAC use.

Maintaining MAC records.

Preparing minutes of meetings.

Arranging meetings and meeting sites.

Maintaining tracking reports of actions taken and issues addressed by the MAC.

Maintaining attendance records.

SUBCOMMITTEES The chairman shall appoint the members of a subcommittee from the membership of the MAC. If other expertise is needed to support subcommittees, the Commissioners or the Director of Medical Review may appoint appropriate individuals.

WORK GROUPS When deemed necessary by the Director of Medical Review or the Commissioners, work groups will be formed by the Director. At least one member of the work group must also be a member of the MAC.

WORK PRODUCT No member of the MAC, a subcommittee, or a work group may claim or is entitled to an intellectual property right in work performed by the MAC, a subcommittee, or a work group.

MEETINGS Frequency of Meetings. Regular meetings of the MAC shall be held at least quarterly each fiscal year during regular Commission working hours.

CONDUCT AS A MAC MEMBER Special trust has been placed in members of the Medical Advisory Committee. Members act and serve on behalf of the disciplines and segments of the community they represent and provide valuable advice to the Medical Review Division and the Commission. Members, including alternate members, shall observe the following conduct code and will be required to sign a statement attesting to that intent.

Comportment Requirements for MAC Members:

Learn their duties and perform them in a responsible manner;

Conduct themselves at all times in a manner that promotes cooperation and effective discussion of issues among MAC members;

Accurately represent their affiliations and notify the MAC chairman and Medical Review Director of changes in their affiliation status;

Not use their memberships on the MAC: a. in advertising to promote themselves or their business. b. to gain financial advantage either for themselves or for those they represent; however, members may list MAC membership in their resumes;

Provide accurate information to the Medical Review Division and the Commission;

Consider the goals and standards of the workers' compensation system as a whole in advising the Commission;

Explain, in concise and understandable terms, their positions and/or recommendations together with any supporting facts and the sources of those facts;

Strive to attend all meetings and provide as much advance notice to the Texas Workers' Compensation Commission staff, attn: Medical Review Director, as soon as possible if they will not be able to attend a meeting; and

Conduct themselves in accordance with the MAC Procedures and Standards, the standards of conduct required by their profession, and the guidance provided by the Commissioners, Medical Review Division or other TWCC staff.

TRD-200500112

Susan Cory

General Counsel

Texas Workers' Compensation Commission

Filed: January 11, 2005

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How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 29 (2004) is cited as follows: 29 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "29 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 29 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html

version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the TAC.

The TAC volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the TAC, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the TAC scheme, each section is designated by a TAC number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the *Texas Administrative Code*; TAC stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 16, April 9, July 9, and October 8, 2004). If a rule has changed during the time period covered by the table, the rule's TAC number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).

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